

EXHIBIT 9

Page 1

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF NEW JERSEY

3

4 IN RE JOHNSON & JOHNSON TALCUM,)

5 POWDER PRODUCTS MARKETING,) MDL NO.

6 SALES PRACTICES, AND PRODUCTS) 16-2738 (MAS)

7 LIABILITY LITIGATION) (RLS)

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10 --- This is the Deposition of GEORGE NEWMAN,
11 M.D., taken at the offices of Loopstra Nixon,
12 130 Adelaide Street West, Toronto, Ontario, on
13 the 15th day of May, 2024.

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25 REPORTED BY: LEILA HECKERT, CVR, RCP-M

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2 FOR THE PLAINTIFF,	2 WITNESS: GEORGE NEWMAN, M.D.
3 STEERING COMMITTEE AND THE MDL:	3 Examination by Mr. Ewald.....8
4 ASHCRAFT & GEREL, LLP	4
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1 FOR THE DEFENDANT,	1 INDEX OF EXHIBITS
2 JOHNSON & JOHNSON:	2 NO./DESCRIPTION PAGE
3 KING & SPALDING	3 1 Dr. Newman's invoice to Ashcraft & 20
4 PER: JOHN EWALD, ESQ.	4 Gerel, LLP - August 2023 to
5 1185 6th AVE,	5 November 2023.
6 NEW YORK, NY 10036	6 2 Invoice from Dr. Newman to 21
7 Email: jewald@kslaw.com	7 Ashcraft & Gerel, LLP - November
8 Tel: 212 790 5341	8 2023 to December 2023.
9	9 3 Dr. Newman's CV, updated April 34
10 FOR THE PLAINTIFFS,	10 2024.
11 DIANA & GILBERT BALDERRAMA,	11 4 Dr. Newman's November 2023 report. 51
12 & BRANDI & JOEL CARL,	12 5 "Table of Contents George Newman - 51
13 ANAPOL WEISS	13 Expert Report."
14 PER: TRACY FINKEN (via Zoom)	14 6 June 17, 1966 memo. J&J 97
15 130 N 18th St #1600	15 000235850. To Dr. Hildick-Smith,
16 Tel: (215) 929-8822	16 Subject: Johnson's Baby Powder
17 tfinken@anapolweiss.com	17 Talc Aspiration. June 17, 1966.
18	18 7 Food and Drug Administration 127
19 FOR PERSONAL CARE PRODUCTS COUNCIL,	19 Certificate - D-7214 (1986 FDA).
20 REILLY, MCDEVITT & HENRICH, P.C.	20 8 Johnson & Johnson internal memo, 132
21 PER: KEVIN KOTCH, ESQ., (via Zoom)	21 "Windsor minerals and talc."
22 3 EXECUTIVE CAMPUS, SUITE 310,	22 April 26, 1973.
23 CHERRY HILL, NEW JERSEY, 08002	23
24 Email: kkotch@rmh-law.com	24
25 Tel: (856) 317-7180	25

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3	9 "Review On The Present Status Of Talc Safety Substantiation Activities And Update Of Contingency Plans," January 1975, Bates Number of J&J000026987.	146		1 --- Upon commencing at 9:24 A.M. 2 (WHEREUPON, the witness was duly sworn.) 3 GEORGE NEWMAN, M.D., 4 called as a witness herein, 5 was examined and testified as follows: 6 EXAMINATION BY MR. EWALD: 7 Q. Dr. Newman, we met off the record 8 and my name is John Ewald and we are having, I 9 think, some connection issues, and so, please, 10 if at any point in time you are not hearing, or 11 need me to repeat anything, just let me know and 12 I'll do my best to try to repeat the question, 13 okay?
8	10 Johnson & Johnson document, Management Authorization for Additional Talc Safety Studies, March 3, 1975.	163		14 A. Sounds great. 15 Q. Is this (inaudible) before? 16 A. Sorry. You broke up there. Can 17 you repeat the question? 18 Q. Have you been deposed before? 19 A. No, I have not.
12	11 Dr. Newman's notes.	178		20 Q. It seems like you've -- from the 21 materials that you've reviewed, at least a 22 couple of depositions, during your process in 23 this case?
13	12 Letter from Alfred Wehner to Michael Chudkowski at J&J Consumer Products. J&J Bates Number 000040596, September 17, 1997.	187		24 A. Yes, I have. 25 Q. So it seems like you probably
17	13 Studies - Facts About Talc.	200		
18	14 American Cancer Society Cancer - Facts and Figures 2024.	201		
20	15 Campaign for Safe Cosmetics from safecosmetics.org site.	212		
22	16 "Is Talc in Makeup Safe?" from drugwatch.com site.	213		
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3	17 Dr. O'Brien's article published in JAMA, "Association of Powder Use in the Genital Area With Risk of Ovarian Cancer."	237		1 have a general idea of -- just to give you a 2 couple of things on my end, especially with the 3 connection issues. It's really important to try 4 to make sure that I finish my question, and I'll 5 try the same to make sure you've finished your 6 answers so the court reporter can get everything 7 down. Does that make sense? 8 A. Sounds great. 9 Q. And certainly, if at any point in 10 time, you need to take a break, please just let 11 me know. And the major point I make on that, 12 though, is if there's a question pending, if 13 I've asked you something, it makes sense to 14 answer the question and then I'll give you a 15 chance to take a break. 16 A. Sounds great. 17 Q. And do you understand that you 18 are under oath and just like you would be if you 19 were appearing in a trial? 20 A. Yeah, I understand. 21 Q. And the last little intro, if 22 there's any question, even if you can hear me 23 now to clear but the question doesn't make 24 sense, please let me know and I'll do my best to 25 rephrase because we want to make sure that you

<p style="text-align: right;">Page 10</p> <p>1 understand the questions, okay?</p> <p>2 A. Okay. I appreciate that. Thank</p> <p>3 you.</p> <p>4 Q. So for the record, (inaudible).</p> <p>5 A. Mr. Ewald, I believe you broke</p> <p>6 up.</p> <p>7 Q. For the record, where are you</p> <p>8 located today?</p> <p>9 A. In Toronto, Ontario at the law</p> <p>10 offices of Loopstra Nixon.</p> <p>11 Q. And I think the stenographic</p> <p>12 record will reflect that counsel Michelle</p> <p>13 Parfitt and a few folks in the room. As we're</p> <p>14 working through the deposition, Dr. Newman, it</p> <p>15 will be helpful for me to understand what</p> <p>16 materials you have with you.</p> <p>17 Can you tell me what you have in paper</p> <p>18 form, for example, with you.</p> <p>19 A. Sure. I'm looking at a window</p> <p>20 and there is a small desk there that has nine</p> <p>21 binders. And so those binder are all of the</p> <p>22 materials that I cite in my report. In front of</p> <p>23 me I have a copy of my report, a recent copy of</p> <p>24 my CV, a table of contents for my report, three</p> <p>25 pages of typewritten notes, and all of those</p>	<p style="text-align: right;">Page 12</p> <p>1 screen or do you want me to pull the hard copy</p> <p>2 form here?</p> <p>3 Q. So that is really -- it's totally</p> <p>4 your preference as long as you feel comfortable.</p> <p>5 A. Okay.</p> <p>6 Q. And so, you know, I think, I</p> <p>7 will -- I'll probably not put on the screen your</p> <p>8 report as you have in front of you, so we can</p> <p>9 see each other as easily as possible. But if</p> <p>10 it's a document, I'll put it on the screen,</p> <p>11 sometimes it's a document that's one-page and,</p> <p>12 you know, that's all you need to look at. But</p> <p>13 if you're more comfortable looking at what's in</p> <p>14 the paper form, please just let me know, and</p> <p>15 we'll make sure you have it, okay?</p> <p>16 A. Great.</p> <p>17 MS. PARFITT: Hey, John, I'll also add</p> <p>18 that in addition to the materials, I wanted to</p> <p>19 make sure that you received a copy of the</p> <p>20 Dropbox that we sent last Friday. And then --</p> <p>21 MR. EWALD: Yes.</p> <p>22 MS. PARFITT: -- yesterday, there were</p> <p>23 a couple of websites that were in the Dropbox.</p> <p>24 I just wanted to make sure they found their way.</p> <p>25 I know we are different examiners, not everyone</p>
<p style="text-align: right;">Page 11</p> <p>1 notes are just excerpts from materials so all of</p> <p>2 that material is verbatim from materials that</p> <p>3 I'm citing. And then I just have a blank</p> <p>4 notepad so I can take notes during our</p> <p>5 conversation.</p> <p>6 Q. That's helpful. And, Michelle,</p> <p>7 it may be helpful maybe during a break to give a</p> <p>8 copy of the three pages of the separate notes.</p> <p>9 MS. PARFITT: John, what I can do is</p> <p>10 get that in the chat maybe during the break.</p> <p>11 How does that work?</p> <p>12 MR. EWALD: Perfect.</p> <p>13 MS. PARFITT: Thank you.</p> <p>14 BY MR. EWALD:</p> <p>15 Q. I think as a matter, as we're</p> <p>16 going forward, Dr. Newman, that largely I'm</p> <p>17 going to be asking questions about the report.</p> <p>18 There are going to be some documents, most of</p> <p>19 them cited in your report, and I'll talk about</p> <p>20 and put up a screen, but certainly if you need</p> <p>21 time to pull something from the binder or</p> <p>22 anything like that, just let me know, okay?</p> <p>23 A. Sure. Just a question about</p> <p>24 protocol. When we do reference those documents,</p> <p>25 is it better for me to look at them on the</p>	<p style="text-align: right;">Page 13</p> <p>1 has received what they need, so I just want to</p> <p>2 make sure you have those. Very good.</p> <p>3 MR. EWALD: No. I definitely</p> <p>4 appreciate that, Michelle. And I did -- I think</p> <p>5 I received everything. We will see if I didn't</p> <p>6 as we proceed --</p> <p>7 MS. PARFITT: Let me know.</p> <p>8 MR. EWALD: Yep, great. Thank you.</p> <p>9 MS. PARFITT: Of course.</p> <p>10 BY MR. EWALD:</p> <p>11 Q. So, Dr. (inaudible) with --</p> <p>12 you're telling me how you got involved as an</p> <p>13 expert in this litigation?</p> <p>14 A. Sure. I received a call from</p> <p>15 Michelle Parfitt.</p> <p>16 Q. Okay. And, so, you received a</p> <p>17 call from Michelle Parfitt.</p> <p>18 And approximately when was that?</p> <p>19 A. Roughly June or July of last year</p> <p>20 of 2023.</p> <p>21 Q. All right. And (inaudible) you</p> <p>22 broke up a (inaudible). Did you say June or</p> <p>23 July 2023?</p> <p>24 A. Correct, yes.</p> <p>25 Q. I don't want to get to the</p>

<p style="text-align: right;">Page 14</p> <p>1 specifics of the conversation that you had with 2 Ms. Parfitt. 3 But you agreed to be retained at or 4 shortly after the time you spoke with her in 5 June or July of 2023? 6 A. Yeah, yeah. That's correct. 7 Q. In your report, and we'll get to 8 it. You talk about question or what you were 9 asked to review in connection in this case, if 10 you want to look at paragraph 9 of your report 11 on paper. 12 A. Great, yeah. 13 Q. When you were first retained in 14 this case, was the direction to you on what you 15 were going to review the same as what is 16 reflected in paragraph 9? 17 A. When I first spoke to 18 Ms. Parfitt, the -- it was basically just to 19 look into marketing and advertising as it 20 pertained to Johnson's talcum powder products. 21 Q. And, again, although there's a 22 slight breakup, I think I got it. When you 23 spoke with Ms. Parfitt, the initial (inaudible) 24 and advertising of Johnson & Johnson was that 25 specifically as it relates to talc?</p>	<p style="text-align: right;">Page 16</p> <p>1 research on this topic? 2 A. No, I didn't. 3 Q. And when you are starting to do 4 this research in June, July of 2023 -- maybe 5 just because you broke up earlier, can you just 6 repeat what was the specific issue that you were 7 looking at? 8 A. Sure. Generally, it was anything 9 related to the marketing of Johnson & Johnson 10 powder products, so the talcum powder products, 11 Johnson's Baby Powder, Shower to Shower, 12 Johnson's Baby Powder with cornstarch, and then 13 I was looking at documents relevant to, you 14 know, broadly the advertising, sale and 15 distribution of those products, also any, kind 16 of, consumer research that Johnson & Johnson had 17 done about those products or contracted with, so 18 I wanted -- those were other materials that I 19 wanted to look at. 20 Q. (Inaudible) initial review in 21 June, July 2023, you mentioned you received some 22 documents from counsel. Is that right? 23 A. Correct. Yes, so we would have 24 conversations periodically on the phone or Zoom, 25 and then I would indicate categories of</p>
<p style="text-align: right;">Page 15</p> <p>1 A. To talc and talcum powder 2 products and also the associated products, 3 cornstarch, et cetera. 4 Q. Right. So how did you go about 5 that first when (inaudible) into that issue, 6 what did you do? 7 THE REPORTER: Sorry. He needs to 8 repeat that. There was a word, I didn't catch. 9 THE WITNESS: Mr. Ewald, could you 10 repeat that question? 11 BY MR. EWALD: 12 Q. When you were first -- so when 13 you were asked (inaudible) the issue that we 14 just talked about in June, July of 2023, what 15 did you do? 16 A. Sure. So I looked at a bunch of 17 different categories of information. So, I 18 searched online, looked at, kind of, materials 19 that were out there from facts about talc, from 20 Health Canada, from, you know, some of the 21 Google Scholar, looking at some of the epi 22 studies, and then, you know, I also requested 23 documents from counsel. 24 Q. So did you get any guidance from 25 counsel on where to look in connection with your</p>	<p style="text-align: right;">Page 17</p> <p>1 documents that I was interested in reviewing. 2 And then, I would receive a link to a Dropbox 3 folder. And I would look at the documents in 4 that Dropbox folder. Many of the documents were 5 relevant, some weren't relevant to the things 6 that I was looking at. And so then I would just 7 focus on my attention, you know, on the 8 documents that were relevant to the marketing 9 issues. 10 MR. EWALD: We can go off the record 11 for just one moment. 12 -- OFF THE RECORD AT 9:38 A.M. 13 -- RESUME AT 9:55 A.M. 14 BY MR. EWALD: 15 Q. All right. Thank you, Dr. Newman 16 and Ms. Parfitt for your assistance. And I 17 think right now we are in a much better place 18 technology-wise. But my comment earlier, 19 Dr. Newman, remains the same: If at some point 20 in time I cut out or you don't hear me, just 21 let me know, okay? 22 A. Sounds great. 23 Q. Sure. When we went off the 24 record, we were talking at a high level of what 25 you started doing once you were engaged in the</p>

<p style="text-align: right;">Page 18</p> <p>1 case in June, July of 2023, you were talking 2 about some work that you had done. And at what 3 point in time, did you understand the question 4 that you were going to be answering would be 5 what is written out in paragraph 9 that we 6 talked about?</p> <p>7 A. Maybe just ask for a bit of 8 clarification. By question, you mean, is there 9 a specific part of that statement?</p> <p>10 Q. Right. Fair enough. So when I 11 started asking questions about this, you 12 indicated that the initial part of the retention 13 in June, July 2023, you are looking into the 14 marketing and sales practices of J&J, and it 15 wasn't necessarily being asked to do what is 16 stated in paragraph 9 as your task. Is that 17 fair?</p> <p>18 A. Correct. If you are referring to 19 part, you know, were there aspects of the 20 marketing that were misleading or created 21 confusion.</p> <p>22 Q. Right.</p> <p>23 A. I would say that's something that 24 I couldn't give you an exact time at which that 25 happened, but it's something that evolved as I</p>	<p style="text-align: right;">Page 20</p> <p>1 document, reviewed, two and half hours. Do you 2 see that?</p> <p>3 EXHIBIT NO. 1: Dr. Newman's invoice 4 to Ashcraft & Gerel, LLP - August 5 2023 to November 2023.</p> <p>6 THE WITNESS: Yes.</p> <p>7 BY MR. EWALD:</p> <p>8 Q. And would that be the start date 9 for when you started your work on this project 10 in earnest?</p> <p>11 A. That's when I started this 12 litigation, yeah.</p> <p>13 Q. And if we scroll down through the 14 first page, it's all document review, phone 15 meeting. And then we get to October 27, '23 on 16 the second page. And it's the first entry of a 17 number of entries that's labelled "Draft 18 comment," do you see that?</p> <p>19 A. Correct, yes.</p> <p>20 Q. And what do you mean by "draft 21 comment"?</p> <p>22 A. Just that I was working on the 23 comment that I was drafting the comment.</p> <p>24 Q. And when you're -- understanding 25 that this may be your first rodeo in litigation,</p>
<p style="text-align: right;">Page 19</p> <p>1 was reviewing materials. You know, I was 2 beginning to form theories or an understanding 3 about what happened. And, so, I couldn't put it 4 at an exact point in time. But, you know, 5 something that evolved over time.</p> <p>6 Q. So when we were talking about the 7 timeline overall, approximately when did you 8 start preparing the report?</p> <p>9 A. It wasn't long after. Again, I 10 would say probably in October. But I don't know 11 for certain.</p> <p>12 Q. Without getting into any 13 specifics, did anybody assist you in the 14 drafting of the report?</p> <p>15 A. No.</p> <p>16 Q. I'm going to mark a couple of 17 documents, to start us off, as exhibits that 18 were produced to me by counsel. I'm going put 19 up on the screen. And let me know if you have a 20 problem seeing it. Do you see that, Doctor?</p> <p>21 A. Yep.</p> <p>22 Q. Okay. And we'll mark this as 23 Exhibit 1. It is an invoice dated 11/21/23 from 24 Dr. Newman to the Ashcraft Law firm. And the 25 first entry here, Doctor, is August 8, 2023,</p>	<p style="text-align: right;">Page 21</p> <p>1 you're talking about comment, are you referring 2 to the expert report that you issued in November 3 2023?</p> <p>4 A. Yes. That was my understanding 5 of what it was called, yeah.</p> <p>6 Q. Sure. And then, let me mark next 7 as Exhibit 2 another invoice from Dr. Newman to 8 the Ashcraft firm. This one is -- appears to be 9 undated, but last time-entry is starting in 10 November of '23, and ending in December of '23, 11 correct?</p> <p>12 EXHIBIT NO. 2: Invoice from 13 Dr. Newman to Ashcraft & Gerel, LLP - 14 November 2023 to December 2023.</p> <p>15 THE WITNESS: Correct, yes.</p> <p>16 BY MR. EWALD:</p> <p>17 Q. And, so, your report is issued on 18 November 15th, 2023, correct?</p> <p>19 A. Yes. That's correct.</p> <p>20 Q. When you are reviewing documents 21 in the month or so following the issue -- the 22 issuance of your report, what were you looking 23 at?</p> <p>24 A. So there were -- there were like 25 a couple of other experts, Dr. Kessler, in</p>

6 (Pages 18 - 21)

<p style="text-align: right;">Page 22</p> <p>1 particular, that I wanted to look at his report. 2 And then also the deposition when it was 3 available. So I remember I read that very 4 closely. And I believe that there might have 5 been a few other documents that I requested that 6 you know, as I continued to think about the 7 case, and my opinion is still evolving, right, 8 I'm still learning about the case, you know, 9 that I requested additional documents.</p> <p>10 Q. So if I'm understanding you 11 correctly, it's one of the things you were 12 looking at in the month following issuance of 13 your report or other reports that have been 14 issued by plaintiff's experts around the same 15 time as yours in November of 2023?</p> <p>16 A. And Dr. Kessler in particular, 17 yeah.</p> <p>18 Q. And so you said that, 19 particularly interested in what Dr. Kessler had 20 to say, and why is that in connection with your 21 opinion here?</p> <p>22 MS. PARFITT: Objection, broad.</p> <p>23 THE WITNESS: Can you just restate the 24 question. I got a little confused there for a 25 second.</p>	<p style="text-align: right;">Page 24</p> <p>1 deposition more recently, right? 2 A. That's right. When it became 3 available. I don't recall exactly when that 4 was.</p> <p>5 Q. Sometime approximately within the 6 last month or so, something like that?</p> <p>7 A. I think that's right, yeah.</p> <p>8 Q. Was there anything in 9 Dr. Kessler's deposition that modified the 10 opinions that you offer in your report dated 11 November 2023?</p> <p>12 A. No.</p> <p>13 Q. Now, I just showed you two 14 invoices. 15 Have you issued to Ms. Parfitt any 16 other invoices so far in this litigation?</p> <p>17 A. No, I have not.</p> <p>18 Q. And I could bring it back up, but 19 the second invoices ended with a time entry 20 sometime in December 2023, right?</p> <p>21 A. Correct, yes.</p> <p>22 Q. So if we are basically catching 23 us up to present, do you have an estimate of how 24 many hours you have spent on the case from, 25 let's say, end of December to today?</p>
<p style="text-align: right;">Page 23</p> <p>1 BY MR. EWALD: 2 Q. Sure. No problems. 3 Is what, if any, impact does 4 Dr. Kessler's report and deposition have on the 5 opinions that you are offering in this case?</p> <p>6 A. Well, given his position, and 7 given that he was speaking to some of the 8 regulatory issues and some of the issues that, I 9 think, overlap with the marketing issues that I 10 was looking at, you know, I was curious to 11 better understand, you know, some of these 12 specific arguments that he was making in his 13 report.</p> <p>14 Q. Are you relying on any of 15 Dr. Kessler's opinions for your opinions in this 16 case?</p> <p>17 A. I wouldn't say that. I formed my 18 opinion, written my opinion, you know, when I 19 submitted my report. And, so, the things I 20 found were kind of consistent with my opinion, 21 but I wouldn't say that I relied on, you know, 22 his report at all in drafting mine.</p> <p>23 Q. And we'll probably get more to 24 it.</p> <p>25 But you had reviewed Dr. Kessler's</p>	<p style="text-align: right;">Page 25</p> <p>1 A. You know, I don't know exactly, 2 so I can venture a guess. But, you know, I 3 actually I don't -- I don't know exactly. I 4 wouldn't want to guess.</p> <p>5 Q. You're learning fast, and I don't 6 want you to guess either. But if you had to 7 give a range, for example, if I were to say do 8 you have a reasonable sense that you billed 9 since the end of December 2023 over 100 hours, 10 does that sound right?</p> <p>11 A. I don't think it would be over 12 100, no.</p> <p>13 Q. Over 50?</p> <p>14 A. Possibly, possibly. But I'm not 15 sure. Just to clarify, I mean, I haven't 16 billed, I haven't sent an invoice or anything, 17 yet, yeah.</p> <p>18 Q. Okay. Just looking for an 19 estimate.</p> <p>20 A. Sure.</p> <p>21 Q. And if you had to break down into 22 different buckets, basically, how he spent your 23 time on this case from the beginning of the year 24 until today, what would you say?</p> <p>25 A. Again, I would say the majority</p>

1 is document review, just continuing to read and 2 understand and going back and revisiting 3 documents that I had read before, requesting new 4 documents, reading those, like the deposition 5 that we talked about. 6 Q. Without getting into any of the 7 specifics, did you meet with counsel in 8 preparation for your deposition today? 9 A. I did, yes. 10 Q. And who did you meet with? 11 A. I met with Michelle Parfitt and 12 Rudie Soileau. 13 Q. How many times did you meet with 14 them in preparation for today's deposition? 15 A. Met yesterday, and then there 16 were a few phone meetings. 17 Q. And how long did you meet with 18 counsel yesterday? 19 A. It was over half a day. I don't 20 know the exact number of hours. 21 Q. And apologies, sometimes "half a 22 day" means something different to some people. 23 If you guys say how many hours half a 24 day is, and how many is that? 25 A. Sorry. I was thinking about a	Page 26 1 A. Roughly, August, 20 -- July, 2 August 2021. 3 Q. Were you retained by a company 4 for this purpose? 5 A. No. 6 Q. Were you retained by governmental 7 body? 8 A. No. 9 Q. Retained by an individual? 10 A. Yes. 11 Q. Did that retention have anything 12 to do with talc? 13 A. It did, yes. 14 Q. Are you relying, in part, on what 15 you learned during that consulting arrangement 16 for your opinion today? 17 A. Yes, I am. 18 Q. And do you understand that prior 19 consulting arrangement is confidential? 20 A. I do, yes. I signed an NDA. 21 Q. Did the work have to do with 22 potential health effects associated with talc? 23 A. It did, yes. 24 Q. And if I ask you who retained 25 you, would you be able to tell me as part of
Page 27 1 workday. More than four and under eight. 2 Q. And, fortunately, I think 3 Ms. Parfitt and I sometime have days that are 4 longer than eight hours. 5 MS. PARFITT: I agree, John. 6 MR. EWALD: You're on the same page. 7 MS. PARFITT: Yes. 8 BY MR. EWALD: 9 Q. You mentioned that you've never 10 been deposed before. 11 Have you ever given testimony of any 12 kind before? 13 A. No, I haven't. 14 Q. In this case you are disclosed as 15 an expert. 16 Have you ever been retained as what 17 you understood to be a confidential consulting 18 expert, before today, in litigation? 19 A. Yes. 20 Q. And I don't want to get into 21 specifics. But let's get a little bit more info 22 on that so we will see. 23 Approximately when did you get 24 retained for this confidential consulting 25 matter?	Page 29 1 your NDA? 2 A. I believe so, yeah. 3 Q. So who would be -- 4 A. Michelle Parfitt. 5 Q. Can you describe to me what work 6 you did back in July, August 2021 relating to 7 talc? 8 A. Again, looking at very similar 9 issues. Looking into, basically, the marketing 10 issues pertaining to talc, talcum powder 11 products, you know, the associated products, but 12 focused on advertising, distribution, sale, 13 consumer research, that type of stuff. 14 Q. Approximately how many hours did 15 you bill on the consulting project in 2021? 16 A. Again, this would be a rough 17 estimate. But using the benchmarks that we 18 established before, I would say over 100 hours. 19 Q. When did all that work happen 20 2021? 21 A. I don't recall exactly. The bulk 22 of it, yeah, happened in 2021, probably spanning 23 it to 2022 a little bit as well, yeah. 24 Q. Did that work result in any kind 25 of written work product?

1 A. No, it did not. 2 Q. When you started work in 2023 on 3 what ended up in your current report, did you, 4 as part of your work, go back to the materials 5 that you reviewed in 2021? 6 A. Yeah. Yes, that's right. 7 Q. And are those -- are any of the 8 materials that you consider to be your opinions 9 in this case - that you reviewed first in 2021 - 10 reflected on your preference list and report? 11 A. If I understand the question 12 right, everything -- 13 Q. Right. 14 A. -- that is in -- that is 15 referenced in my report would be inclusive of, 16 basically, everything that I was learning, all 17 the material that I reviewed, 2021 up until, you 18 know, present-day. 19 Q. When Ms. Parfitt reached out to 20 you in 2021, did you have an understanding about 21 how she connected with you? 22 A. I don't -- actually, I have no 23 idea. 24 Q. Do you recall what rate -- hourly 25 rate you charged for your time in 2021?	Page 30	1 variety of sources, some from the Kilmer House 2 website, some from eBay, and other kinds of 3 secondhand retailers. And then, you know, there 4 are the documents that I requested of counsel. 5 Q. When you are looking for 6 resources online, were you using any -- let me 7 withdraw it. 8 When you were looking at resources 9 online, were you making any kind of an 10 assessment as to whether or not the information 11 being provided was reliable? 12 A. Yes, to the best of my ability, I 13 was, yes. 14 Q. So to the best of your ability, 15 to extent that you're reviewing information 16 online about alleged health risks associated 17 with ovarian cancer, what, if any, expertise do 18 you have to assess whether or not what is being 19 asserted is reliable? 20 MS. PARFITT: Objection, form. 21 THE WITNESS: My training is in 22 cognitive science, so I'm not an epidemiologist 23 or a medical doctor of any kind. But I am 24 trained as a scientist, I practice as a 25 scientist, so, you know, I can understand
1 A. It was the same rate, \$600 an 2 hour. 3 Q. While we're on that topic, is 4 that \$600 an hour for document review, 5 deposition today, trial if it's happening, 6 everything? 7 A. Not for, like, the deposition 8 today. My hourly is 750. 9 Q. And what about trial testimony, 10 if it happens? 11 A. It would also be 750. But, 12 again, I'm new to all of this, but so that 13 hasn't happened. 14 Q. That's fair. 15 What was the process in 2021 for your 16 review of materials? 17 A. Like we discussed before, I mean, 18 it was the same process as in 2023. So I was 19 looking at different categories of information, 20 so, you know, looking for resources online, 21 looking to the literature, the scientific 22 literature, both, you know, epidemiological 23 studies, as well as relevant work in my area of 24 expertise, consumer behaviour and psychology. 25 Looking at advertisements, which came from a	Page 31	1 scientific writing, understand, you know, basic 2 statistics and that sort of thing. 3 BY MR. EWALD: 4 Q. And understanding that you can 5 understand the scientific writing, do you have 6 the expertise, in your view, to assess whether 7 or not a scientific statement about health risk 8 associated with talc is based on reliable 9 information? 10 A. Not at that kind of granularity, 11 no. I would say reading it as a scientist from 12 an adjacent field, and I would say that that is, 13 kind of, the limit of my expertise there. 14 Q. At any point in time from 2021 15 when you were first retained by Ms. Parfitt 16 until today, have you spoken with anyone that 17 you understand to be a plaintiff expert in this 18 MDL? 19 A. No, I haven't. 20 Q. And have you sought guidance from 21 any scientist in connection with the opinions 22 that you are offering in your November 2023 23 report? 24 A. When you say "scientist", could 25 you be more specific?

1 Q. Well, I'm assuming based on your 2 time entries and what you've said that you have 3 conferred with counsel in connection with the 4 preparation of your November 2023 report, right? 5 A. Sure, yes, that's right. 6 Q. And maybe a better way to ask it 7 is have you conferred with anyone, other than 8 counsel, in connection with the opinions that 9 you are offering in your November 2023 report? 10 A. No. 11 Q. Let's pull up and mark as 12 Exhibit 3 your CV that I received from counsel. 13 Can you see that, Doctor? 14 EXHIBIT NO. 3: Dr. Newman's CV, 15 updated April 2024. 16 THE WITNESS: Yes. 17 BY MR. EWALD: 18 Q. And this CV has a date in the 19 upper left corner of April 2024. Is it your 20 current CV? 21 A. It is, yes. 22 Q. So, your current position is 23 Associate Professor of Organizational Behaviour 24 in Human Resource Management and Marketing 25 Rotman School of Management in the University of	Page 34 1 A. My wife is also a professor, and 2 so we had what's called the two-body problem, 3 and just trying to be at the same place, and so 4 we were able to -- she had a position at the 5 University of Toronto, and so they were able to 6 make a position for me, and so I joined last 7 year. 8 Q. Okay. I believe you mentioned in 9 your report on paragraph 2 that when you were at 10 Yale, you were tenure-track faculty. Is that 11 correct? 12 A. That's correct, yes. 13 Q. You did not make tenure while you 14 were at Yale? 15 A. No, no. 16 Q. Correct? 17 A. Correct, that's right. 18 Q. In your CV, you have a change in 19 title in 2016 from Associate Professor of 20 Management at Yale School of Management to 21 Associate Professor of Management and Marketing, 22 right? 23 A. Correct. Yes, that's right. 24 Q. What was that change about? 25 A. So there's a promotion, so that
Page 35 1 Toronto. Is that correct? 2 A. That is correct, yes. 3 Q. And does -- you were not a 4 tenured professor at the University of Toronto? 5 A. No, I'm not. 6 Q. Do they have a tenure-track at 7 the University of Toronto? 8 A. Yes, they do. 9 Q. Are you on the tenure-track? 10 A. Well, it's a complicated 11 question. When I was hired, it was during a 12 hiring freeze, essentially, at the university, 13 and so the position I'm on is not, but as a line 14 opens up, then I would convert to that. And so 15 that's what the designation of the associate 16 professor rank, kind of, signifies which is 17 that, you know, I would be moving into that role 18 on the tenure line once a tenure line position 19 is open. 20 Q. But as of right now, you're not 21 tenure-track at the University of Toronto? 22 A. Correct, that's right. 23 Q. What was the reason for the 24 change from Yale in 2022 to the University of 25 Toronto?	Page 35 1 would be the next step and then maybe just 2 trying to anticipate your -- a question. So 3 tenure is at the full level at Yale, so I was 4 not -- you know, was not full professor at Yale, 5 but was associate then came to Rotman. 6 Q. Are you currently teaching 7 classes? 8 A. I am. 9 Q. In Toronto? 10 A. Yes. Not currently, but, yes. 11 Q. I always forget when the school 12 year ends. 13 But for the last semester, for 14 example, what classes did you teach? 15 A. I taught the Intro to 16 Organizational Behaviour course. 17 Q. And if you had to give me a brief 18 overview of what that class is about, what would 19 you say? 20 A. Largely, it's the study of people 21 working together in groups and teams and 22 organizations. And so it's a broad overview of 23 the psychology and sociology in trying to 24 understand those dynamics. 25 Q. Since you've been at Toronto,

<p style="text-align: right;">Page 38</p> <p>1 have you taught any other classes? 2 A. Not at Toronto, no. 3 Q. What are the types of classes 4 that you taught while you were at Yale? 5 A. I taught consumer behaviour. And 6 then I also taught a class that was very similar 7 to Intro to Organizational Behaviour there, it 8 was called "The Employee," but essentially, the 9 same kind of class.</p> <p>10 Q. Consumer behaviour, what sorts of 11 topics did you cover? 12 A. So consumer behaviour is, 13 basically, the psychological and strategy issues 14 around marketing, but, you know, taught from the 15 perspective or from the vantage of the consumer, 16 so trying to understand the nature of consumer 17 perceptions and how that intersects with a 18 company's marketing strategy.</p> <p>19 Q. Typically, how do you understand 20 the nature of consumer perceptions? 21 A. You'll have to be a little bit 22 more specific. 23 Q. Well, what are -- in your class, 24 what do you teach the students about how are 25 some different ways to understand the nature of</p>	<p style="text-align: right;">Page 40</p> <p>1 lack of a better term, of different types of 2 experimental work? 3 A. Yeah, sure. So, typically, you 4 would divide up a psychology department into 5 cognitive psychology, which is what my training 6 is in, it's basically the study of thinking; 7 social psychology, which is all about 8 interpersonal and group relationships. A lot of 9 my work also dovetails with social psychology; 10 then, you know, you might have personality 11 psychology, you might have clinical psychology 12 as part of that track. You might have 13 neuroscience or behavioural neuroscience that 14 would be part of a psychology department. But 15 those are all, would be, you know, experimental 16 fields within psychology.</p> <p>17 Q. And, so, within specifically, you 18 talked about cognitive psychology and social 19 psychology, are they different types of accepted 20 empirical methods that psychologist use to find 21 out about consumer perceptions?</p> <p>22 A. Absolutely, yes.</p> <p>23 Q. And what are those?</p> <p>24 A. There's a variety of methods. I 25 would say some of the most common ones would be</p>
<p style="text-align: right;">Page 39</p> <p>1 consumer protections -- oh, perceptions, sorry. 2 A. Sure. Well, I mean, you know, 3 one, you know, we would, kind of, talk about it 4 in terms of important psychological principles. 5 But, you know, one, you know, big topic is the 6 role of expectation of people's prior 7 expectations and beliefs, and how that changes 8 things. And so, you know, people might express 9 a strong preference for Coke over Pepsi, but in 10 a blind taste test, they can't distinguish them 11 apart. So trying to understand how things like 12 brand or brand awareness change consumer 13 psychology, change purchase habits.</p> <p>14 Q. And so if you're trying to 15 understand the consumers' prior expectations and 16 beliefs, for example, in your Coke example, how 17 would you go about determining those consumer 18 perceptions? 19 A. So I'm an experimental 20 psychologist, so the work that I'm talking about 21 in my classes and the work that I'm doing as 22 part of my day-to-day are all psychology 23 experiments, essentially. 24 Q. And as an experimental 25 psychologist, are there established buckets, for</p>	<p style="text-align: right;">Page 41</p> <p>1 an experiment, or maybe you are familiar with 2 A/B testing, I think is the way that idea has 3 spilled over into the broader public. But you 4 would expose two different randomly assigned 5 groups to similar information that differs in 6 one important way, and then look at some outcome 7 measure to see how that variables then affected 8 whatever dependent measure you were interested 9 in.</p> <p>10 Another method would be looking at 11 kind of regression, using regression analyses to 12 understand larger patterns of behaviour. So you 13 might get data from SKUs in a store, or you 14 might be taking some other kind of behavioural 15 measure; how often people donate to this 16 particular cause, and you'd say, Well, I've got 17 a hypothesis about some of the predicting 18 factors.</p> <p>19 Another method would be a field 20 experiment where you're making some kind of 21 random assignment in the field. You know, and 22 then a lot of the other methodologies are 23 directly overlapping with -- all of the 24 methodologies, to be clear, that I talked about, 25 are directly overlapping with psychology; those</p>

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<p style="text-align: right;">Page 42</p> <p>1 are psychological methods. And then there might 2 be, kind of, more nuanced methods, like using 3 eye-tracking software or using -- you know, 4 doing fMRI work, or something like that that 5 would all be part of, you know, research in 6 marketing or research in consumer behaviour but 7 using psychology.</p> <p>8 Q. Thank you. Very helpful.</p> <p>9 A. Sure.</p> <p>10 Q. Didn't even have to take the 11 class.</p> <p>12 Have you ever published on how 13 companies communicate with consumers with 14 respect to health risks of their products?</p> <p>15 A. I apologize for pausing for a 16 second. I'm just trying to think. Not -- not 17 directly on -- not directly on health risks.</p> <p>18 Q. Anything indirectly on health 19 risks?</p> <p>20 A. Sure, I mean, I've published a 21 lot on what companies communicate about 22 production methods, about things like 23 sustainability, various kinds of environmental 24 methods, things like manufacturing location. So 25 these additional features about a product, and,</p>	<p style="text-align: right;">Page 44</p> <p>1 to any particular company. Is that fair? 2 A. That's right, yeah. And it's a 3 very common method in these studies is that you 4 would, kind of, blind the company so you're not 5 drawing on people's pre-existing beliefs about a 6 particular organization.</p> <p>7 Q. You said that that work has not 8 been published.</p> <p>9 Was it submitted for publication?</p> <p>10 A. No. It wasn't. It was --</p> <p>11 sometimes you have it that graduate students 12 will often be the lead on a project, and then 13 sometimes graduate students go elsewhere and, 14 kind of, disappear, and with that goes the 15 project. And so, it's one of those kind of 16 languishing things but, yeah.</p> <p>17 Q. So, approximately, what time did 18 you work on this project with the graduate 19 students?</p> <p>20 A. I would say that was probably six 21 years ago or so.</p> <p>22 Q. Have you ever -- apart from your 23 work since 2021 with Ms. Parfitt, have you done 24 any work related to Johnson & Johnson?</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 43</p> <p>1 you know, I have collected data and been 2 involved in collaborations where we have looked 3 at the communication regarding corporate crises 4 and health risks specifically. I was just 5 pausing because I don't think we published those 6 studies. But a lot of studies that are very 7 related to that idea.</p> <p>8 Q. The corporate crisis health risk 9 data that you collected but was not published, 10 what did that relate to?</p> <p>11 A. That was different responses to a 12 corporate crisis. So does a company respond in 13 an engaged manner, in a defensive manner, or 14 with no comment? So we were looking at those 15 different strategies. These are all for 16 hypothetical companies, so we're stripping 17 information about the company away, and just 18 using, kind of, the bare facts of what happened 19 and then we are tweaking the company response 20 and looking to how that influences consumer 21 perceptions.</p> <p>22 Q. And so when you say "hypothetical 23 company", am I understanding you correctly that 24 it is based on actual companies and what 25 occurred, but you were not attributing that data</p>	<p style="text-align: right;">Page 45</p> <p>1 Q. Before being retained in 2021, 2 what, if anything, did you know about talc? 3 A. Virtually nothing. I just knew 4 that it was a product.</p> <p>5 Q. Did you know at the time in 2021 6 of any alleged health risks with the use of 7 talc?</p> <p>8 A. Not really, no.</p> <p>9 Q. Before being retained in 2021, 10 what, if anything, did you know about asbestos?</p> <p>11 A. Very little.</p> <p>12 Q. And though it's hard to cast your 13 mind back, but if you had to say what you knew 14 in 2021 what very little was, what did you know 15 about asbestos?</p> <p>16 MS. PARFITT: Objection, form.</p> <p>17 THE WITNESS: That it was harmful.</p> <p>18 BY MR. EWALD:</p> <p>19 Q. Anything else?</p> <p>20 A. You know that it used to -- was 21 used in some manufacturing, and so that you 22 could get asbestos in an old building, and that 23 kind of thing.</p> <p>24 Q. When you got retained in 2021 25 before today, did you do any background research</p>

<p style="text-align: right;">Page 46</p> <p>1 for yourself relating to asbestos specifically? 2 A. I did a little bit of reading, 3 yeah. 4 Q. And what do you recall looking 5 at? 6 A. Well, and I don't remember, you 7 know, I'm looking at a variety of sources online 8 and trying to just educate myself. But 9 learning, for instance, about the co-occurrence 10 of asbestos in natural formations, understanding 11 that or what I believe to understand that 12 asbestos refers to a certain shape of a 13 particle, that's kind of like needle-like fibre. 14 I wasn't really aware of that with that kind of 15 specificity before. 16 Q. When you say that, to your 17 understanding, that asbestos refers to shape and 18 needle-like fibre, where did you get that 19 understanding? 20 A. Again, I don't know. I 21 couldn't -- I couldn't say. I mean, at some 22 point in doing research and just trying to read 23 about what asbestos is online, you know, my 24 go-to usually is Google Scholar, that's where I 25 try to get a lot of my information, and so it</p>	<p style="text-align: right;">Page 48</p> <p>1 issuing your opinions in this case about whether 2 or not Johnson & Johnson talc has ever been 3 contaminated with asbestos? 4 A. No, I am not. 5 Q. Has counsel asked you to make any 6 assumptions in connection with the opinions that 7 you're offering in this matter? 8 MS. PARFITT: Objection, form. 9 BY MR. EWALD: 10 Q. I saw in your materials reviewed 11 references to certain plaintiff expert reports 12 including Dr. William Longo. Do you know who 13 that is? 14 A. Only that he is another expert 15 witness in this litigation. 16 Q. Have you reviewed any of his 17 reports? 18 A. Not closely at all, no. 19 Q. Are you relying, in any way, on 20 the opinions that Dr. Longo is offering in his 21 reports? 22 A. No, I am not. 23 Q. Do you recall reviewing expert 24 reports of Dr. Plunkett and Dr. McTiernan? 25 A. I recall the name Plunkett,</p>
<p style="text-align: right;">Page 47</p> <p>1 was consulting materials there, but I don't 2 remember exactly which ones. 3 Q. And that's fair. But as you sit 4 here today, can you point me to any particular 5 source that you were using your definition of 6 asbestos? 7 A. You know, and, I wouldn't -- I 8 wouldn't even say that I have a definition of 9 asbestos, at all. I interpreted your question 10 as, you know, what did you know before and what 11 do you know now? I would describe my knowledge 12 now as very, very limited, and would just 13 describe it as an understanding of something 14 that changed prior; I just didn't know what 15 asbestos was at all and think that I have at 16 least some slight idea of what it might be now. 17 Q. Do you have an understanding as 18 to whether or not there is a debate among 19 scientists as to the definition of asbestos? 20 A. No. I'm not aware of that. 21 Q. Are you offering any opinions 22 about whether or not Johnson & Johnson talc 23 products has ever contained asbestos? 24 A. No, I am not. 25 Q. Are you making any assumptions in</p>	<p style="text-align: right;">Page 49</p> <p>1 Dr. Plunkett. And, again, that might be one of 2 those reports that I glanced at, but I did not 3 review carefully. 4 Q. Are there any expert reports that 5 you reviewed, as you say, carefully or more 6 detail apart from Dr. Kessler's? 7 A. Sage. 8 Q. And do you rely on the opinions 9 in Dr. Sage's reports for your opinions here? 10 A. No. 11 Q. Did anything that you reviewed in 12 Dr. Sage's report or deposition modify the 13 opinions that are articulated in your November 14 2023 report? 15 A. No, not that I can recall. 16 Q. Are you going to be offering any 17 opinions as to whether or not Johnson & Johnson 18 complied with its regulatory obligations over 19 the years as it relates to talc? 20 A. No. 21 Q. Are you going to be offering any 22 opinions about what, if any, changes should have 23 been made to the product warning label? 24 A. No. 25 Q. Are you going to be offering any</p>

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<p style="text-align: right;">Page 50</p> <p>1 opinions as to what specific language should 2 have been included in advertisements to warn of 3 potential health risks? 4 A. No. Not specific language. 5 Q. Do you have any expertise in 6 assessing the benefits and health risks of a 7 product in determining whether or not it should 8 be marketed? 9 A. No, not -- as I understand your 10 question, you know, in the way that, like, a 11 regulatory body would make that judgment, no, I 12 don't have any experience to that effect. 13 MR. EWALD: So, we have been going for 14 about an hour. I'm about to change topics. I 15 am happy to keep going. But I'm also happy to 16 take a break if folks want to take a break. 17 MS. PARFITT: Doctor, it's up to you. 18 If you're good -- 19 THE WITNESS: Will the next road stop 20 be another hour from now? 21 MR. EWALD: No. I mean, that's 22 completely up to you and the court reporter. If 23 anyone needs the restroom or anything like that, 24 let me know. 25 THE WITNESS: I'm good to keep going</p>	<p style="text-align: right;">Page 52</p> <p>1 BY MR. EWALD: 2 Q. Got it. Makes sense. Let's talk 3 about your report, and if you have it in front 4 of you -- I can also put it up on the screen if 5 you need any help in pointing to the right 6 direction. I want to start at paragraph 9. Let 7 me know when you're there. 8 A. Yep, I'm here. 9 Q. So in paragraph 9, first sentence 10 states: 11 "I was asked to review Johnson & 12 Johnson's practices regarding the 13 promotion and sale (i.e., marketing) 14 of Johnson's talcum powder products, 15 and to assess whether the company 16 engaged in misleading and deceptive 17 conduct that created confusion and 18 misunderstanding among consumers by 19 failing to communicate and 20 appropriately inform consumers of 21 health risks associated with Johnson's 22 talcum powder products." 23 First question, did I read that, 24 correctly? 25 A. Yes.</p>
<p style="text-align: right;">Page 51</p> <p>1 right now. I just didn't want to -- you know, 2 not driving through Kansas or something. 3 BY MR. EWALD: 4 Q. Let's keep going then. I will 5 mark as Exhibit 4 your November 2023 report. 6 And, Doctor, if you flip near the end to Exhibit 7 B, there's a references list. 8 EXHIBIT NO. 4: Dr. Newman's 9 November 2023 report. 10 THE WITNESS: Yeah, okay. 11 BY MR. EWALD: 12 Q. And I'm also going to mark as 13 Exhibit 5 what we received called "Table of 14 Contents. George Newman - Expert Report." I'll 15 put this up on the screen. This is Exhibit 5. 16 Our Exhibit B to your November 2023 report, is 17 that the same as this table of contents? 18 EXHIBIT NO. 5: "Table of Contents 19 George Newman - Expert Report." 20 THE WITNESS: My understanding is that 21 those should be very, very similar, and the -- 22 if there are any additional documents, they 23 would be in that "Table of Contents" document, 24 which would reflect things that I have reviewed 25 since I submitted my report.</p>	<p style="text-align: right;">Page 53</p> <p>1 Q. And then you go on to say in 2 paragraph 9 and: 3 "I was not asked to give an 4 opinion as to whether talcum powder 5 products cause cancer." 6 Is that correct? 7 A. That's correct, yes. 8 Q. And when you're talking about in 9 that first sentence of paragraph 9, "health 10 risks associated with Johnson's talcum powder 11 products," is that, in your review, limited to 12 ovarian cancer health risk or is it broader? 13 A. You know, I -- it is -- no, it's 14 not limited to ovarian cancer. So I would say 15 that it's broader than ovarian cancer, yeah. 16 Q. And does it encompass any 17 possible health risk, as you understand it, 18 associated with the talc? 19 A. Well, the -- no, the other cancer 20 risk associated with talc, although, you know, I 21 would say the same -- the same behaviours also 22 apply in the inhalation concerns, as well. 23 Q. So when you say "behaviours," 24 you're talking about behaviours of Johnson & 25 Johnson or behaviours of consumers?</p>

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<p>1 A. Sorry. Behaviours of Johnson & 2 Johnson. Yeah, the actions. 3 Q. And when you're talking about 4 inhalation -- that applies to the inhalation 5 concern, what is your understanding of that 6 inhalation concern? 7 A. My understanding is that there 8 was a concern raised about the inhalation risk 9 in a few different medical journals, The Journal 10 of Pediatrics is one that I recall. And then -- 11 and then from what the -- the documents that I 12 reviewed, you know, those risks were not 13 communicated and those concerns were not 14 communicated directly to consumers. 15 Q. And when you're talking about 16 risk, you understand that the inhalation risk 17 was specific to infants? 18 A. I do understand that, yes. 19 Q. When you say that that concern 20 was not communicated to consumers, is that your 21 understanding as to the present day? 22 A. I'm sorry. I'm getting tripped 23 up. What do you mean by -- 24 Q. Yeah, that was a little vague, 25 and unintentionally. So, do you have an</p>	<p>Page 54</p> <p>1 that, indeed, Johnson & Johnson engaged in 2 misleading and deceptive conduct? 3 A. Yes, that's my opinion. 4 Q. And so is it your opinion that 5 Johnson & Johnson knew that there were health 6 risks associated with a talc product and 7 intentionally did not disclose those? 8 A. It's my opinion that there were 9 risks in the general public. Let me correct 10 that. That there was -- you know, there was 11 peer-reviewed science from various credible 12 sources; there were risks raised about Johnson's 13 Baby Powder and Johnson's Baby Powder products, 14 and that, you know, internally, there are a lot 15 of documents which show that the company was 16 aware of those concerns, and then none of those 17 concerns were disclosed to the public, and, in 18 effect, a very different kind of message was 19 given to the public, which was, you know, the 20 product is completely safe, there's no problem, 21 you know, scientifically proven that it's safe. 22 And so that's the disconnect that I'm referring 23 to in terms of the statements being misleading. 24 Q. I want you to assume for purposes 25 of my question that talc -- that Johnson &</p>
<p>1 understanding as to whether or not there is -- 2 well, let me withdraw the question again. 3 You've indicated, I believe, that 4 risks about inhalation with infants had not been 5 communicated. Is that you're understanding? 6 A. That's my understanding, yes. 7 Q. And is that you're understanding 8 that as of today, J&J still has not communicated 9 any risk associated with inhalation of its 10 product by infants? 11 A. Again, that is my understanding. 12 In terms of the risks that I'm focusing on in my 13 report and the bulk of my report, really are the 14 cancer issue, ovarian cancer, mesothelioma. 15 Q. So we have, you reported health 16 risks associated with talcum powder products in 17 paragraph 9, and when you were asked to review, 18 am I understanding you correctly that when 19 you're talking about health risks there, you're 20 talking about cancer inhalation? 21 A. I think it's most accurate just 22 to say cancer, cancer, yeah. 23 Q. Now, in assessing whether Johnson 24 & Johnson engaged in misleading and deceptive 25 conduct, did you reach a conclusion in this case</p>	<p>Page 55</p> <p>1 Johnson talc does not cause ovarian cancer, 2 okay? That's just an assumption I'm asking you 3 to make. Fair? 4 A. Okay, sure. 5 Q. If that assumption is correct 6 that J&J talc does not cause ovarian cancer, 7 what is left of the opinions that you are 8 offering in this case? 9 MS. PARFITT: Objection, form. 10 You may answer. 11 THE WITNESS: I still believe that 12 they did something wrong, that, you know, you 13 have a long history of internal documents 14 talking about these health risks. You know, 15 there's language in those documents like, in -- 16 you know, in the inevitability that talc 17 products are banned, you know, there were -- 18 there was a very specific effort to develop an 19 alternative product, the cornstarch product, 20 over many years, which they product-tested and 21 there's a lot of internal documents that show 22 that the purpose of that cornstarch product was 23 to address the health risks associated with 24 talcum powder, and replace talcum powder. That 25 never happened.</p>

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<p style="text-align: right;">Page 58</p> <p>1 And so there are a lot of actions on 2 behalf of the company which I -- that, you know, 3 I think, lend credence to the idea that they 4 were treating these as serious and credible 5 risks internally and having lots of discussions 6 about them, and, yet, a very different story was 7 told to the public through advertising.</p> <p>8 BY MR. EWALD:</p> <p>9 Q. And you were talking about 10 potential banning of talc product, there can be 11 a government ban of a product but it doesn't 12 establish that the project is dangerous, 13 correct?</p> <p>14 MS. PARFITT: Objection, form.</p> <p>15 THE WITNESS: I mean, I think anything 16 is possible. You know, in -- in my review, you 17 know, it's not just a consideration of some bad 18 things might happen because people are saying 19 bad things. There are very deliberate actions 20 to try to find an alternate source of revenue. 21 And, you know, I think there is a larger story 22 here that, you know, I'm trying to communicate 23 with my report about the importance of talcum 24 powder products to the brand strategy, not just 25 for Johnson's Baby but for Johnson & Johnson</p>	<p style="text-align: right;">Page 60</p> <p>1 risk or concern associated with the product. 2 BY MR. EWALD: 3 Q. You said a couple of different 4 things there, "problem, concern, risk." 5 My initial question is: Am I correct 6 that you are not in a position to assess whether 7 or not there are any potential health risks 8 associated with the use of the talc? 9 MS. PARFITT: Objection. Misstates 10 his testimony. Asked and answered. 11 THE WITNESS: I think, I mean, I 12 just -- you know, what I just said in reviewing 13 those documents, I do believe I'm able to reach 14 a conclusion about what I would call a credible 15 risk or, you know, was the company treating this 16 as a credible risk? Were they taking actions 17 that suggested that they thought there was some 18 kind of potential problem or risk associated 19 with the product?</p> <p>20 BY MR. EWALD:</p> <p>21 Q. And when you say "credible risk," 22 are you saying that -- well, what do you mean by 23 "credible risk"?</p> <p>24 A. Something that had enough 25 substance to spur actions and internal memos and</p>
<p style="text-align: right;">Page 59</p> <p>1 overall, you know, this concept of a golden egg 2 that comes up in a lot of different materials. 3 And so what I read is a lot of 4 internal discussion about concerns of 5 potentially replacing or acknowledging a problem 6 with Johnson's Baby Powder, and none of those 7 concerns, none of those potential risks are 8 communicated.</p> <p>9 BY MR. EWALD:</p> <p>10 Q. And we talked about, you're not 11 in a position to assess whether or not there are 12 any, in fact, potential health risks associated 13 with talc products, correct?</p> <p>14 MS. PARFITT: Objection, misstates his 15 testimony.</p> <p>16 THE WITNESS: You know, I can review 17 their internal documents which talk about the 18 risks that are -- that have been raised about 19 the product, some of the documents which point 20 to, you know, the possibility of asbestos, and 21 the failure of the quoted-quote "clean mine" 22 approach. I'm drawing on Johnson & Johnson's 23 own words, but I think I can interpret those 24 words to say that they understood that there was 25 some kind of problem or at least some kind of</p>	<p style="text-align: right;">Page 61</p> <p>1 discussions and meetings about it. 2 Q. If there is a risk associated -- 3 if there's a concern that is raised about the 4 safety of a product, would you expect that a 5 good company would investigate whether or not 6 that risk has any credibility?</p> <p>7 A. Sure.</p> <p>8 Q. And the fact that they went 9 through that investigation to determine whether 10 or not the concern raised was credible, does 11 that have bearing, in your mind, as to whether 12 or not it's a scientifically viable risk?</p> <p>13 A. But that's not what they told 14 consumers. They didn't tell consumers, Hey, we 15 looked at some evidence and then we looked at 16 other evidence, and we did our testing and 17 here's what we found. They just said, It's 100 18 percent safe, there's no problem whatsoever, you 19 can trust us. And there's 100 years of 20 advertising that literally are built around the 21 concept of trust, that, this is our trust mark, 22 this is why you should purchase our product 23 because you can trust us more than our 24 competitors.</p> <p>25 So that statement carried with it</p>

<p style="text-align: right;">Page 62</p> <p>1 enormous gravity for consumers and, frankly, 2 then consumers weren't, I think, given the fair 3 opportunity to really make up their own mind 4 about the potential risks.</p> <p>5 Q. So you say that it carried 6 enormous gravity for consumers and consumers 7 weren't able to make up their own mind about the 8 risk. What do you rely on for that conclusion?</p> <p>9 A. Johnson & Johnson's own market 10 research.</p> <p>11 Q. Point me to market research of 12 Johnson & Johnson that concludes that consumers 13 were not able to make up their own mind about 14 the product risk because of the trust they had 15 in Johnson & Johnson.</p> <p>16 A. You know, if -- that's verbatim 17 what I said that it misstates my point, that the 18 consumer research from Johnson & Johnson shows 19 that trust in the company is the primary 20 attribute that is leading consumers to purchase 21 Johnson & Johnson products over the competitors. 22 So if you give me a minute, I can find the exact 23 reference. But, for instance, there's a study 24 that they conducted which said, Would you 25 purchase Walmart brand talcum powder versus</p>	<p style="text-align: right;">Page 64</p> <p>1 work that is doing for them, so in that case, it 2 was central to their marketing strategy.</p> <p>3 BY MR. EWALD:</p> <p>4 Q. So, I understand your point about 5 the trust aspect in J&J's research. But then, 6 as I understand it, what you just said and what 7 you say in the report, you go a step further and 8 say that the nature of that trust relationship 9 prevented consumers from making up their own 10 mind about the risks associated with the 11 product. Is that your testimony?</p> <p>12 A. No. I --</p> <p>13 MS. PARFITT: Objection. Misstates 14 his testimony.</p> <p>15 Please, Doctor, you may answer.</p> <p>16 THE WITNESS: I would --</p> <p>17 MR. EWALD: I'm sorry. Michelle, what 18 did you say?</p> <p>19 MS. PARFITT: I said it misstates his 20 testimony, John.</p> <p>21 You may answer.</p> <p>22 BY MR. EWALD:</p> <p>23 Q. Right. Go ahead.</p> <p>24 A. Okay. I believe that misstates 25 my testimony, so I don't -- I don't think it's</p>
<p style="text-align: right;">Page 63</p> <p>1 Johnson & Johnson talcum powder. So consumers 2 were twice as likely to purchase Johnson & 3 Johnson talcum powder, and the number one reason 4 they cited is because it's a trustworthy brand 5 because they have trust in the company.</p> <p>6 And then there's a lot of market 7 research in that same slide deck talking about 8 what does trust mean? Well, trust isn't the 9 product attributes, it's the emotional weight, 10 it's the emotional association, it's the 100 11 years of advertising that we have about the 12 product.</p> <p>13 Q. Would you agree with that me that 14 any company in the marketing context would love 15 to have the trust of its consumers?</p> <p>16 MS. PARFITT: Objection, form.</p> <p>17 THE WITNESS: I would agree that it 18 was a very specific strategy that was incredibly 19 successful for Johnson & Johnson. I mean, they 20 talk explicitly of this is what built a global 21 brand, is this association, the mother-infant 22 bond, the golden egg. This is what built 23 Johnson's Baby, this is what built Johnson & 24 Johnson, this is what allowed us to expand 25 globally. So, that's their own analysis of the</p>	<p style="text-align: right;">Page 65</p> <p>1 the trust that was misleading. I think saying, 2 "Our product is safe, it's 100 percent safe, we 3 know it with certainty," and using language like 4 "it's scientifically proven that it's safe," and 5 so there's no mention of competing risks -- 6 competing evidence, and the point about the 7 trust and the advertising is that statement 8 isn't inert, it's not like the consumers are 9 considering it in some vacuum, they are actually 10 considering it with this legacy that goes back 11 100 years of what they believe to be true about 12 the brand, that this is a very trustworthy 13 brand. And, hey, if they're telling us that 14 it's safe and they've never detected any kind of 15 problem whatsoever, then it must be. And I 16 think there's a direct conflict between that 17 message and what consumers concluded from that 18 message and then what the internal documents 19 show about the nature of the conversation they 20 were really having.</p> <p>21 Q. Well, when you talk about what 22 consumers concluded from that message, what, if 23 any, data do you rely on for that opinion?</p> <p>24 A. Again, I would cite Johnson & 25 Johnson's own market research about why</p>

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<p style="text-align: right;">Page 66</p> <p>1 consumers are preferring Johnson & Johnson. The 2 reason why they're going to Johnson & Johnson is 3 because of this trust factor.</p> <p>4 Q. I understand the trust factor, 5 but there's that other piece of -- you are 6 making opinions about what Johnson & Johnson was 7 or was not saying about potential health risk 8 associated with talc and the impact that it has 9 on consumers. Correct?</p> <p>10 A. Correct. Yeah, yeah, that's 11 right.</p> <p>12 Q. And so what, if any, data do you 13 rely on for what Johnson & Johnson's conduct and 14 statements relating to potential health risk of 15 talc had on consumer choice?</p> <p>16 A. Again, I mean, maybe I'm just not 17 fully understanding the question, and I 18 apologize, but I would come back to Johnson & 19 Johnson's own market research data. The data 20 are telling you that, Oh, look, the reason why 21 people are going to us is because of this trust, 22 because we have -- and there's language in there 23 that this is our most precious asset. Not 24 Johnson's Baby Powder, the trust itself. The 25 trust is the most precious asset. This is kind</p>	<p style="text-align: right;">Page 68</p> <p>1 you conduct that you didn't include your report?</p> <p>2 A. Well, I became specifically 3 interested in, actually, the current 4 communication around talc products and the 5 health risks. And, you know, were those -- even 6 today, is that potentially misleading consumers?</p> <p>7 And so I conducted at least a pilot study just 8 to inform myself about whether there was the 9 potential for that relationship to exist.</p> <p>10 Q. What was the nature of this pilot 11 study?</p> <p>12 A. Sure. I took just language from 13 the facts about talc website. And there's one 14 paragraph in particular which talks about, if 15 you don't mind, I could just read --</p> <p>16 Q. Yeah.</p> <p>17 A. -- the paragraph that I focused 18 on. Okay, so the paragraph was the most recent 19 cohort study published --</p> <p>20 Q. I'm sorry. Sorry to interrupt 21 you. But, just, it's important for the record, 22 that's clear where you're reading from. So can 23 you tell me where you're reading from?</p> <p>24 A. Oh, these -- yeah, of course. 25 These are the notes that I brought with me.</p>
<p style="text-align: right;">Page 67</p> <p>1 of what's making the whole marketing or 2 advertising machine go.</p> <p>3 And so, I mean, and then that is my 4 expertise as somebody who is a psychologist and 5 somebody who has expertise in market research, 6 is that the effect of that kind of messaging 7 over a very long time changes the nature of 8 people's perceptions. Just like we talked about 9 before with the Coke versus Pepsi example, 10 right? That brand and that messaging starts to 11 mean something. And even though the soda 12 doesn't taste any different, people think 13 there's a difference. And I think that's also 14 true, a similar kind of idea is very much true 15 in this case.</p> <p>16 Q. Now, you said before you're an 17 experimental psychologist, right?</p> <p>18 A. Correct, yes.</p> <p>19 Q. But you've not conducted any kind 20 of empirical tests to support your opinions in 21 this case, correct?</p> <p>22 A. Actually, I wouldn't say that 23 that's correct. Nothing that I included in my 24 report, but I have, yeah.</p> <p>25 Q. Okay. What empirical tests did</p>	<p style="text-align: right;">Page 69</p> <p>1 Q. Okay.</p> <p>2 A. Okay. Yeah.</p> <p>3 Q. And does it say, like, what page 4 or paragraph they're taken from?</p> <p>5 A. This is just taken from --</p> <p>6 directly from the website on the Facts About 7 Talc. If you like, I can make a note and I know 8 about where it's located.</p> <p>9 Q. No, that's fine. I think 10 Michelle's gonna give me a copy of that three 11 pager during, maybe, the next break, so that's 12 fine. Go ahead.</p> <p>13 A. Okay, so there's a paragraph that 14 reads:</p> <p>15 "The most recent cohort study 16 published in JAMA... 17 And I'm just using the abbreviation: 18 "...pulled a high number of high 19 level epidemiological studies and 20 found no statistically significant 21 increased risk of ovarian cancer with 22 talc use. The study reconfirms that a 23 statistical association between 24 ovarian cancer and powder users -- 25 MS. PARFITT: Dr. Newman, she has to</p>

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<p style="text-align: right;">Page 70</p> <p>1 take down what you're saying. If you can slow 2 it just a little bit. Okay.</p> <p>3 THE WITNESS: Sorry, yes.</p> <p>4 MS. PARFITT: Thank you.</p> <p>5 THE WITNESS: I'll just pick up "The 6 study reconfirms," okay, my apologies:</p> <p>7 "The study reconfirms that a 8 statistical association between 9 ovarian cancer and powder users is not 10 found in large prospective cohort 11 studies, although some, but not all 12 case controlled studies do indicate a 13 slight statistical association."</p> <p>14 And my opinion in reading that was the 15 way in which that, essentially, that there is a 16 statistical association, there is evidence of a 17 statistical association is buried at the end of 18 a paragraph. In a sense, that's difficult, I 19 think, for the average person to actually parse 20 and make sense of. You have to jump back a 21 couple of sentences to know exactly what that's 22 referring to.</p> <p>23 So in the pilot study that I ran, just 24 trying to inform my own perceptions, I randomly 25 assigned one group of people to read exactly the</p>	<p style="text-align: right;">Page 72</p> <p>1 A. No, I'm not.</p> <p>2 Q. Okay. And when you say that the 3 change version reduced -- sorry. What was the 4 change version reduced the number of people that 5 trusted the company?</p> <p>6 A. Or how much they reported 7 trusting the company on a one to five Likert 8 scale, yeah.</p> <p>9 Q. And what was the difference 10 between the two groups?</p> <p>11 A. I don't recall exactly the 12 magnitude of -- I mean, it was below a .05 p 13 threshold, but I don't remember the effect size 14 exactly or anything like that. And again, I 15 base my opinions just on my expertise in doing 16 this for a very long time and understanding how 17 consumers respond to information. But with 18 respect to this specific issue, I was just 19 curious, does that check out even in this very 20 kind of nuanced example?</p> <p>21 Q. Okay. When you go on in 22 paragraph 10 of your report to say that: 23 "The methodology I employ, the 24 purposes of this report use the same 25 objectivity and systematic analysis I</p>
<p style="text-align: right;">Page 71</p> <p>1 information as it appears verbatim on the 2 website, and a different group of people read 3 the same information, except for I changed the 4 phrase "studies do not indicate a slight 5 statistical association" to "studies do not 6 indicate a slight statistical association 7 between talcum use and ovarian cancer."</p> <p>8 And in this study, like we talked 9 about before, I did not mention Johnson & 10 Johnson at all. I used a hypothetical company 11 name, and then I asked, how much do you trust 12 this company on a Likert scale? And found that 13 even disambiguating that sentence very slightly 14 reduced how much people said they trusted the 15 company. Which suggested to me, again, it's not 16 conclusive. But you're asking, well, did you 17 test any of your ideas about this? It suggested 18 to me that even to this day, burying that kind 19 of information, burying the lead, so to speak, 20 is distorting things for consumers and making it 21 more difficult for them to understand the 22 totality of what's out there.</p> <p>23 BY MR. EWALD:</p> <p>24 Q. So are you relying on your pilot 25 study for your opinions in this case?</p>	<p style="text-align: right;">Page 73</p> <p>1 apply in my professional academic 2 career."</p> <p>3 Isn't it true that in your 4 professional academic career, when you publish 5 articles that are posing hypothetical, you are 6 then backing your conclusion up with 7 experimental analysis?</p> <p>8 MS. PARFITT: Objection, form.</p> <p>9 THE WITNESS: There might be a 10 terminology issue here, so maybe we could -- you 11 could say a little bit more about -- I'm not 12 getting the distinction between hypothetical and 13 experimental.</p> <p>14 BY MR. EWALD:</p> <p>15 Q. Well, when you are offering a 16 conclusion in the scientific literature --</p> <p>17 A. Yes.</p> <p>18 Q. You've published a number of 19 articles, correct?</p> <p>20 A. Yes, yeah.</p> <p>21 Q. And when you're offering a 22 conclusion in the published literature, you 23 support that conclusion with experimental data, 24 correct?</p> <p>25 A. Correct, yes.</p>

<p>1 Q. And you are not doing that here, 2 correct?</p> <p>3 A. Yeah. But what I mean by 4 applying the same systematic analysis is I think 5 that the bedrock of what I'm doing 6 experimentally is starting from a null 7 hypothesis, which is exactly what I did here. 8 And I started with a null hypothesis that there 9 wasn't anything misleading about the marketing 10 communications, that there wasn't any kind of 11 disconnect between what the company was 12 discussing internally and what they were telling 13 consumers. And so just in the same way that I 14 would look for experimental evidence that would 15 lead me to reject that null hypothesis, you 16 know, I was looking: Well, is there evidence in 17 this case that leads me to reject the null 18 hypothesis that there wasn't kind of any 19 disconnect there, any kind of misleading 20 statements.</p> <p>21 Q. Now, in that same paragraph 10, 22 you talk about documents that you requested of 23 counsel relevant to the promotion and sale of 24 Johnson's Baby Powder, and Shower to Shower, 25 right?</p>	<p style="text-align: right;">Page 74</p> <p>1 Q. Yeah. And I understand from 2 paragraph 10 what you asked plaintiff's counsel 3 to give you on the marketing materials and 4 communications.</p> <p>5 What, if anything, did you ask 6 plaintiff's counsel to give you as it related to 7 internal Johnson & Johnson documents that relate 8 to potential health effects associated with the 9 use of talc?</p> <p>10 A. I was -- that wasn't really a 11 focus of my inquiry. I was looking at marketing 12 communications, which -- I'm sorry, internal 13 documents which discussed marketing issues. 14 Now, a number of the documents that I reviewed 15 did discuss marketing issues in the context of 16 health concerns. So, for instance, when you 17 know they're talking about developing a 18 cornstarch product, there are documents which 19 talk about developing that cornstarch product 20 specifically to address the health concerns 21 associated with talc. So that would be an 22 instance in which a document mentioned both 23 things.</p> <p>24 Q. Okay. So if I'm understanding 25 you correctly, to the extent that there are</p>
<p>1 A. That's right, yeah.</p> <p>2 Q. You talk about marketing 3 materials and communications directed to 4 consumers, corporate documents discussing these 5 products, testimony from former employees of 6 Johnson & Johnson, publicly available 7 information, and the peer-reviewed scientific 8 literature relevant to talking about our use, 9 right?</p> <p>10 A. Correct, yes.</p> <p>11 Q. What about documents related to 12 potential health risk associated with talc? How 13 did you get your hand on those?</p> <p>14 A. I searched Google Scholar.</p> <p>15 Q. Okay. But when we're talking 16 about -- what about -- that's a fair question.</p> <p>17 And on that one, what did you search 18 Google Scholar for?</p> <p>19 A. I don't remember the exact search 20 terms, but talcum powder, cancer, ovarian 21 cancer.</p> <p>22 Q. Or internal Johnson & Johnson 23 documents, though, not something that would be 24 on Google Scholar, correct?</p> <p>25 A. Yeah. Correct, yes.</p>	<p style="text-align: right;">Page 75</p> <p>1 documents from Johnson & Johnson that you 2 reviewed in connection with your opinions that 3 relate to potential health risks associated with 4 talc, you had those in your possession because 5 they also relate to marketing issues?</p> <p>6 A. Correct, yeah.</p> <p>7 Q. So, for example, you made 8 reference earlier to the top asbestos 9 controversies referenced in a document or two 10 that you reviewed.</p> <p>11 You didn't ask counsel for documents 12 that gave a full picture on how the history of 13 that top asbestos controversy played out?</p> <p>14 MS. PARFITT: Objection, form.</p> <p>15 THE WITNESS: I wouldn't agree with 16 that. I mean, again, I was really restricted in 17 looking or -- sorry, I restricted my analysis in 18 looking at marketing issues. And so if -- it 19 was getting into testing and internal testing 20 and external testing, that was beyond my 21 expertise and beyond what I felt like I was able 22 to properly evaluate. So I'm evaluating at the 23 level of the word and the internal discussions 24 that Johnson & Johnson is having about these 25 controversies with respect to their products and</p>

1 various types of strategy decisions that they 2 seem to be making. 3 BY MR. EWALD: 4 Q. So if we look at 10(e) as an 5 Edward, the: 6 "Product Risks. Assessing the 7 timing and nature of health concerns 8 regarding talcum powders by consulting 9 publicly available information in 10 scientific literature." 11 Did I read that correctly? 12 A. Yeah. 13 Q. And so explain to me what you 14 mean by that in 10(e). 15 A. Basically, my strategy is what 16 would somebody be able to find out if -- what 17 would they be able to find out about the product 18 and what science is out there? I mean, I 19 recognize that most consumers do not have the 20 same scientific training that I do, but I'm also 21 not an epidemiologist. And so if they were to 22 go on to Google Scholar and start reading 23 studies, what kinds of things would they learn? 24 Or if they were to consult other types of 25 information, what would they learn about those	Page 78 1 record now. 2 MS. PARFITT: We'll take like five 3 minutes, everyone. All right? 4 -- RECESS TAKEN AT 11:26 A.M. 5 -- RESUME AT 11:38 A.M. 6 BY MR. EWALD: 7 Q. Dr. Newman, one other question 8 for now at least on materials that you reviewed, 9 I saw on your updated list some testimony with 10 Dr. Friedenfelds. Does that sound familiar? 11 A. Yes, yes. 12 Q. And why did you review her 13 testimony? 14 A. I believe -- I became aware that 15 there was somebody testifying too broadly to 16 some of the marketing issues. And so I was just 17 curious about what they were saying and their 18 testimony. 19 Q. Are you relying on any of the 20 opinions that you -- from Dr. Friedenfelds, that 21 you reviewed in her testimony for your opinions? 22 A. No, not at all. 23 Q. On paragraph 11, carry over from 24 4 to 5, you cite to a Matthew Rabin 1998 25 article.
Page 79 1 risks? So that's the level at which I'm 2 interacting with it. 3 Q. At 11 you say: 4 "In forming my opinion, I 5 consider the totality of evidence." 6 What do you mean by that? 7 A. Well, I mean, I tried to take 8 into account everything that, that I was looking 9 at, that I wanted to understand, well, the full 10 scope of the things that I was seeing about 11 Johnson & Johnson, what they were saying, what 12 was being said in the public, what the 13 advertising was saying in trying to understand 14 how those different timelines or those different 15 kind of streams of information related to one 16 another. So kind of trying to get a more global 17 perspective about what was happening broadly, 18 both within the company and externally, with 19 respect solely to the marketing issues and 20 marketing communication. 21 MS. PARFITT: John, when you get to a 22 comfortable place, let us know. We've gone -- 23 it's almost 11:30 and beyond, but you let us 24 know when you get to a break. 25 MR. EWALD: Yeah. Let's go off the	Page 81 1 A. Yeah. 2 Q. Are you, lack of a better phrase, 3 are you relying on Rabin as a general 4 proposition on the approach you're taking here? 5 A. Yeah, yeah. That Rabin article 6 is a very famous one, which connects kind of 7 psychological bias to economic principles. And 8 so it's kind of a landmark paper where he 9 outlines and says, Hey, people aren't so 10 rational when it comes to consumer decision 11 making. And so here's a bunch of principles 12 from psychology that, as an economist, I think 13 have an important role in the market. 14 Q. When you were talking - on the 15 next page in paragraph 17 and 18 - about the 16 cornstarch product, what opinion are you 17 offering as to how cornstarch impacted, if at 18 all, the, in your view, misleading, the type of 19 conduct that J&J communicated to consumers? 20 MS. PARFITT: Objection, form. 21 You may answer. 22 THE WITNESS: Okay, yeah. I think it 23 speaks to the strategy of the company. In the 24 documents that I reference relevant to 25 cornstarch, there are a lot of communications

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<p style="text-align: right;">Page 82</p> <p>1 about why they're developing this cornstarch 2 product. And in multiple documents, across 3 multiple years, just I'm paraphrasing here, is 4 basically there are concerns about talcum powder 5 and we need a replacement.</p> <p>6 And then there's a lot of test 7 marketing to make sure that it's going to be an 8 effective replacement. They go through that, 9 they confirm there's a lot of powder forecasts 10 which predict, hey, in the future, consumers 11 aren't going to be buying talc products because 12 of these health concerns. Cornstarch is the way 13 of the future. And then it's informative to my 14 opinions because that decision to replace talc 15 with cornstarch is never made. The products are 16 just launched side by side and sold 17 concurrently.</p> <p>18 BY MR. EWALD:</p> <p>19 Q. So is it your opinion that even 20 though Johnson & Johnson had an effective 21 replacement in the market for talc powder, that 22 it nevertheless continued to market talc powder 23 knowing that there were risks of cancer 24 associated with its use?</p> <p>25 A. I'm taking it as evidence that,</p>	<p style="text-align: right;">Page 84</p> <p>1 but I should say that is one area where I made 2 numerous requests of documents over a very 3 specific time period. We're talking about, I 4 believe it's like 1986, where, you know, a 5 company as large as Johnson & Johnson, I imagine 6 that there was some kind of, you know, internal 7 document, internal communication, which said, 8 hey, we're not going with this replacement 9 strategy. We're just going to sell both 10 products. I never encountered such document.</p> <p>11 And so because of that, I never found 12 any kind of explicit justification for why the 13 two products would be sold side by side. I will 14 say that in some of the powder -- the powder 15 forecasts that they're doing around this time, 16 1985, 1986, there's a lengthy discussion, 17 basically, about the strategy and about 18 competitive advantage. And the argument, 19 essentially - and we can talk about those 20 specific documents - but essentially, the 21 argument is, look, we -- we own talc. We own 22 the talc market. We are the talc product. But 23 because cornstarch is a consumer product, sorry, 24 I meant a consumable product - I might be 25 getting the exact designation wrong, but we can</p>
<p style="text-align: right;">Page 83</p> <p>1 you know, we talked before about the term 2 credible, that they were taking it seriously, 3 that they were taking a lot of actions at, what 4 I'm presuming, is great expense to develop and 5 test mark a replacement product. To the extent 6 that they're debating how are we going to 7 replace it? Can we replace it without consumers 8 knowing the difference, et cetera, et cetera. 9 They even develop advertising that they're going 10 to send to their distributors, which says, hey, 11 this is a change for the better.</p> <p>12 And so that, to me, communicates that 13 they were taking those health concerns very 14 seriously and taking actions in response to 15 that.</p> <p>16 Q. So having reviewed those 17 documents and concluding that Johnson & Johnson 18 was taking the health concerns with the product 19 seriously, what is your opinion on why they 20 continue to market the talc product even though 21 they were supposedly taking the concern 22 seriously?</p> <p>23 A. I think that is a big question in 24 this case that there are -- I can cite some 25 documents which I think provide some insight,</p>	<p style="text-align: right;">Page 85</p> <p>1 look at it - we have no ownership. And so 2 basically, it's going to be fair game for all of 3 our competitors.</p> <p>4 And so this presents a real challenge 5 for us. And we either have to find out a way to 6 elevate this cornstarch product so that we can 7 do something different with it, or who knows? 8 And so it's my -- that, and then I think, 9 coupled with all the discussions we were having 10 before about this idea of a golden egg and that 11 Johnson's Baby Powder is the first to consumer 12 product, and there's a lot of internal 13 discussion about even, like, these PR documents, 14 anticipating, well, what are consumers gonna 15 think if we replace talc with cornstarch? What 16 are they going to think about us? And are we 17 admitting that there's a health risk?</p> <p>18 And so, you know, that, to me, again, 19 signals that those kinds of issues were very top 20 of mind for a company. And all I can conclude 21 is that ultimately somebody or a group of 22 somebodies with power said, you know what? The 23 risks don't outweigh the benefits, even though 24 we were planning to replace it. Let's go ahead, 25 because either we're not going to be able to</p>

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<p style="text-align: right;">Page 86</p> <p>1 maintain our share of the market or because 2 we're going to be opening up ourselves to these 3 types of criticisms. 4 So again, I can't point to any 5 specific document which shows me that decision 6 making, but then -- that has been a continued 7 source of kind of frustration on my part of not 8 being able to find documents which communicate 9 that change of strategy.</p> <p>10 Q. Well, when you have a gap in the 11 historical record such as you have identified, 12 is one possibility that you don't have enough 13 information to offer an opinion to a reasonable 14 degree, professional certainty, correct?</p> <p>15 MS. PARFITT: Objection. Misstates 16 him testimony.</p> <p>17 THE WITNESS: No, I wouldn't say that. 18 I mean, what happened is what happened, which is 19 that there are documents which clearly show that 20 they were going with this replacement strategy, 21 and then that replacement strategy never 22 happened. What I'm not able to find in the 23 record is some communication of that decision. 24 And I just find it, frankly, implausible that a 25 company as large as Johnson & Johnson, with as</p>	<p style="text-align: right;">Page 88</p> <p>1 that there's never, I can never find a place in 2 black and white that they say, hey, we were -- I 3 should clarify, there are lots of places that I 4 believe in black and white say our plan is to 5 replace talc with cornstarch leading up to 1986, 6 and then that never happens.</p> <p>7 And so I never find evidence of the 8 communication which directs the various 9 marketing departments of this change. You know, 10 for example, there are advertisements which were 11 developed, which never seem to be released, 12 which say, like literally a change for the 13 better, announcing to retailers that this is 14 going to be a better product. We're changing to 15 a better product. But those advertisements 16 are -- you know, so they go through all of the 17 work of producing these advertisements but then 18 those advertisements are never distributed and 19 the change never happens.</p> <p>20 So again, I don't think the facts are 21 in dispute about a replacement strategy and then 22 a different strategy. Just the thing that is 23 very puzzling to me is how does that happen. 24 Even just from kind of a corporate governance 25 and operations standpoint, how do you direct as</p>
<p style="text-align: right;">Page 87</p> <p>1 many varied departments, you'd have to send out 2 some kind of communication to say, hey, we're 3 doing something different here. I never found 4 any of those documents. It's not -- it doesn't 5 give me question marks about what actually 6 happened. It just is curious to me that there's 7 not any kind of discussion of that change since 8 a change took place.</p> <p>9 BY MR. EWALD:</p> <p>10 Q. Well, I understand the part about 11 it is a fact that in the eighties, talc was not 12 replaced, but on the market at the same time as 13 cornstarch. But on the factual question of why 14 that decision was made, I heard you say that 15 basically the only opinion you can really reach 16 is that there was a decision made that the risk 17 didn't outweigh the benefits, right?</p> <p>18 MS. PARFITT: Objection. Misstates 19 his testimony.</p> <p>20 THE WITNESS: Yeah. Again, there are 21 documents which talk about their competitive 22 strategy and what's defensible from a marketing 23 standpoint. And so I think that that's more 24 than just a hunch or a guess. It's kind of 25 outlining the logic of the decision. It's just</p>	<p style="text-align: right;">Page 89</p> <p>1 many people as were needed, that, hey, we're 2 still going to continue to sell talc powder.</p> <p>3 BY MR. EWALD:</p> <p>4 Q. So is it your opinion that 5 Johnson & Johnson decided in the eighties that, 6 Yeah, there might be a risk that selling the 7 talc product can cause cancer, and, yeah, we 8 have an effective replacement, but we're gonna 9 go ahead and market talc still anyway. Is that 10 your opinion?</p> <p>11 A. No, I --</p> <p>12 MS. PARFITT: Objection, misstates his 13 opinion.</p> <p>14 THE WITNESS: Again, I would disagree 15 with that. I think what I'm able to conclude, 16 looking at the documents that I reviewed, is 17 that the strategy for why the cornstarch product 18 was being developed was very clear as a 19 replacement. And then we're able to see after 20 1986 that that replacement doesn't happen. I 21 don't know -- I don't know what that calculus 22 was. Again, I've offered some suggestions from 23 documents. One, there's the idea of what 24 Johnson's Baby Powder means to the brand, and 25 how central it is to the brand. There are</p>

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1 documents which discuss that. 2 Then there's this idea about 3 competitive strategy, and the fact that they 4 can, quote-unquote, own talc but not own 5 cornstarch. And so that leads me to think that 6 because it's mentioned in those documents that 7 that factored into the decision making, but I 8 don't know beyond that, exactly, how that 9 decision was made. 10 BY MR. EWALD: 11 Q. But you are concluding that 12 Johnson & Johnson, over the years, with its talc 13 marketing, engaged in misleading and deceptive 14 conduct, correct? 15 A. Correct. Correct. And so, for 16 example, I think it is misleading to 17 purposefully develop a replacement product 18 because of health risks, and then never mention 19 any of those health risks to consumers. For -- 20 Q. Well -- 21 MS. PARFITT: Wait, wait. He's not 22 done, John. I'm sorry. 23 MR. EWALD: I know. I wasn't -- go, 24 let him go. 25 MS. PARFITT: You may complete your	Page 90 1 MS. PARFITT: Objection. 2 You may answer. 3 THE WITNESS: I believe that misstates 4 the facts of what happened. So you have a brief 5 period of time, I believe they called it Formula 6 31, that they say, Okay, well, maybe we can win 7 on absorbency and we can make it a more 8 absorbent powder. And that doesn't work. 9 And then there are concerns that 10 arise, 1970, 1973, about -- specifically about 11 asbestos and about health concerns related to 12 talc products. So this is like what I cite in 13 paragraph 50, for example. And so at that 14 point, then they say, okay, well, maybe we 15 should go back to this cornstarch idea because 16 it could be a replacement, because there are 17 these health concerns about talc. And then from 18 1973 through the eighties, they develop a 19 product and they obtain patents. 20 And I would disagree with your 21 characterization that they're considering it. 22 They're not just considering it. It's over a 23 decade. They're investing a lot of money and 24 making a lot of plans into the strategy that: 25 We're going to replace this product. There are
1 sentence, Dr. Newman. 2 THE WITNESS: Okay, yeah. So I do 3 think it's misleading to not reflect the 4 decision making to -- to consumers. Especially 5 when you have things like these -- when they're 6 doing studies in New Orleans, and I believe 7 another one was in Indiana, test marketing the 8 feasibility of cornstarch, and you have 9 consumers, even at that point saying, that they 10 would rather purchase a cornstarch product. And 11 so I find that very puzzling. 12 BY MR. EWALD: 13 Q. So, well, you do acknowledge in 14 your report that there was a first phase of the 15 cornstarch product development that was not 16 geared towards it being a replacement, correct? 17 A. That's correct, yes. 18 Q. Okay. And so when you're saying 19 that Johnson & Johnson should have disclosed to 20 consumers that it considered a cornstarch 21 alternative first to be side by side with talc, 22 then to replace it, and ended up going side by 23 side, but should have said that we think there 24 are health concerns. 25 A. I think --	Page 91 1 problems with the product we have in market. 2 We've got to come up with a new product, and 3 we're going to replace it, and how best to do 4 that. 5 And so I wouldn't say that's just like 6 they're kind of weighing options like in a 7 boardroom. I mean, they're taking a lot of very 8 concrete actions over a long period of time. 9 BY MR. EWALD: 10 Q. Okay. And to your mind, those 11 concrete actions over a long period of time, 12 including things like patents and money invested 13 in alternatives, means that Johnson & Johnson 14 considered the cancer threat to be credible? 15 A. Yes. I think they took it -- 16 they were taking it seriously, yeah, yeah. 17 Q. And so then, if I'm hearing you 18 correctly, what came out of that process is 19 Johnson & Johnson knew they had an effective 20 replacement for talc in cornstarch, correct? 21 A. Correct, yes. 22 Q. They had marketing -- you know, 23 in the field, materials -- sorry. They had 24 studies that in the field, that gave back 25 feedback that customers actually preferred the

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<p style="text-align: right;">Page 94</p> <p>1 cornstarch to the talc. Correct?</p> <p>2 A. Correct, yes.</p> <p>3 Q. And that given those first two</p> <p>4 and the importance, as you say, of the trust and</p> <p>5 the golden egg importance of the talc franchise,</p> <p>6 right? That's something that went into the</p> <p>7 thinking, correct?</p> <p>8 A. And I would add a fourth bullet</p> <p>9 point there, which is that the cornstarch was</p> <p>10 developed because of the health concerns. So,</p> <p>11 like, you know, in 54, in paragraph 54, they</p> <p>12 consult with a market research company to do the</p> <p>13 testing in Wayne, Indiana, for the cornstarch</p> <p>14 product. And they say:</p> <p>15 "In view of possible government</p> <p>16 legislation banning the cosmetic use</p> <p>17 of talcum powder, the brand is test</p> <p>18 marketing Johnson's Baby Powder with</p> <p>19 cornstarch as a possible product</p> <p>20 replacement formula."</p> <p>21 And that kind of language about this</p> <p>22 is a replacement, how are we going to replace</p> <p>23 it? What are consumers going to think about it?</p> <p>24 Is this a viable replacement? And connecting it</p> <p>25 to the health issues, I think, is really central</p>	<p style="text-align: right;">Page 96</p> <p>1 I think that's very important to understand</p> <p>2 about, Well, did Johnson & Johnson ever take</p> <p>3 these health concerns seriously? And, yeah, it</p> <p>4 looks like there's a lot of evidence that they</p> <p>5 did. And yet none of those -- none of that</p> <p>6 gravity was ever communicated.</p> <p>7 Q. Go to paragraph 20.</p> <p>8 A. Sure.</p> <p>9 Q. Let's jump ahead to paragraph 45.</p> <p>10 A. Okay.</p> <p>11 Q. And you say:</p> <p>12 "By as early as 1966, Johnson &</p> <p>13 Johnson was aware of health risks</p> <p>14 associated with the use of talcum</p> <p>15 powder products. In response to these</p> <p>16 safety concerns, Johnson & Johnson</p> <p>17 began developing a replacement powder</p> <p>18 that was made of cornstarch instead of</p> <p>19 talc."</p> <p>20 Did I read that correctly?</p> <p>21 A. Yes, that's right.</p> <p>22 Q. And you cited in paragraph 45 a</p> <p>23 1966 internal memo, correct?</p> <p>24 A. Yes, that's right.</p> <p>25 Q. I am going to mark what I think</p>
<p style="text-align: right;">Page 95</p> <p>1 here and is really central to that argument.</p> <p>2 It's not just that it's a viable product because</p> <p>3 it's a viable product. It's a viable product</p> <p>4 because it addresses the health risks and the</p> <p>5 health concerns about talc.</p> <p>6 Q. And so in your opinion, to a</p> <p>7 professional degree of certainty, is that</p> <p>8 Johnson & Johnson in the eighties decided, Never</p> <p>9 mind, we're going to continue marketing talc</p> <p>10 even though we think there's a credible risk of</p> <p>11 cancer with its use and even though we have an</p> <p>12 effective replacement that our market data</p> <p>13 suggests consumers prefer.</p> <p>14 A. Yeah. In short, yes. I mean, I</p> <p>15 would parse that a little bit, which is part of</p> <p>16 that is just fact. That's just what happened.</p> <p>17 And then what I think lends a lot of support to</p> <p>18 the idea that these were -- they were credible,</p> <p>19 that they were taking it seriously, is all of</p> <p>20 the actions that they're taking ahead of time</p> <p>21 and that they're framing those actions in the</p> <p>22 context of health concerns, right? It's that</p> <p>23 those documents are mentioning health concerns</p> <p>24 alongside the development of cornstarch product.</p> <p>25 That's why we're engaging in this activity. And</p>	<p style="text-align: right;">Page 97</p> <p>1 you're referring to as Exhibit 6, I believe.</p> <p>2 For the record, this is a June 17, 1966 memo.</p> <p>3 It has a Bates number at the bottom right of J&J</p> <p>4 000235850?</p> <p>5 EXHIBIT NO. 6: June 17, 1966 memo.</p> <p>6 J&J 000235850. To Dr. Hildick-Smith,</p> <p>7 Subject: Johnson's Baby Powder Talc</p> <p>8 Aspiration. June 17, 1966.</p> <p>9 THE WITNESS: Yes.</p> <p>10 BY MR. EWALD:</p> <p>11 Q. Doctor, is this the document that</p> <p>12 you're referring to in paragraph 45?</p> <p>13 A. Yes, it is.</p> <p>14 Q. So, setting the scene here a</p> <p>15 little bit, we talked about internal Johnson &</p> <p>16 Johnson document, and the subject line, it's</p> <p>17 Johnson's Baby Powder, Talc Aspiration, right?</p> <p>18 A. Yep.</p> <p>19 Q. This is not about cancer,</p> <p>20 correct.</p> <p>21 A. Understood. Yes.</p> <p>22 Q. So:</p> <p>23 "Reference is made to the</p> <p>24 attached note from Mr. J. Dettre</p> <p>25 forwarding an article by Drs. Hughes</p>

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<p style="text-align: right;">Page 98</p> <p>1 and Kalmer which appeared in June 1966 2 American Journal of Diseases of 3 Children.</p> <p>4 Baby Powder represents the 5 cornerstone of our baby products 6 franchise."</p> <p>7 That's something that you've mentioned 8 before, right, Doctor?</p> <p>9 A. Yes.</p> <p>10 Q. Okay:</p> <p>11 "In addition, we have a large 12 investment in top mine."</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. And so you do quote that in your 16 report, and you put that, I believe, in your 17 Appendix 1 timeline.</p> <p>18 So what importance does the statement 19 "We have a large investment in talc mine" have 20 to your opinions?</p> <p>21 A. Well, I think that it clearly 22 connects the safety concern to the economic 23 concern, which you see -- why I include it in 24 this section about cornstarch development is 25 because in the documents that discuss the</p>	<p style="text-align: right;">Page 100</p> <p>1 reading that paragraph. You know, I'm 2 paraphrasing, I read this saying, this article 3 just came out which says that people should stop 4 using talcum powder because there's a health 5 risk. Talc powder is the cornerstone of our 6 franchise, and we have a large investment in 7 talc mine. We better figure out what to do 8 about it. And so, I mean, I don't know how to 9 answer that other than just like, the person 10 who's writing this is directly connecting those 11 ideas.</p> <p>12 Q. Okay. And so, by the way, are 13 you suggesting or are you offering the opinion 14 rather, that this type of economic analysis to 15 safety issues is something that is pervasive 16 throughout the entire time period when J&J's 17 marketing its talc.</p> <p>18 A. I mean, in -- I'm able to -- I 19 would say that I observed it over a very long 20 time period. I would say that there are many 21 documents, especially from this period of, you 22 know, the sixties through the eighties, which 23 continually make a link between different 24 strategies they could take with talc powder and 25 replacement products and what would be the</p>
<p style="text-align: right;">Page 99</p> <p>1 cornstarch replacement, they're discussing it in 2 the context of what are the economic 3 repercussions? And this document does a very 4 similar kind of thing. Hey, there's a health 5 concern about our product. What's going to be 6 the economic fallout? But one problem for us is 7 that we have a large investment in talc mine. 8 And so we can't just stop selling talc. Let's 9 figure out what we're going to do about it.</p> <p>10 And so to me, it's very informative 11 because it starts to connect these ideas, which, 12 you know, quite frankly, is different than the 13 credo of the company. The credo isn't like, 14 your health and safety is number one, unless it 15 has negative economic repercussions for us. 16 It's just health and safety is number one. And 17 that quote, even to me, says, well, look, our 18 interests are more complicated than that. It's 19 not just health and safety, it's health and 20 safety and the fact that we own a talc mine.</p> <p>21 Q. Well, are you -- what evidence do 22 you have that Johnson & Johnson's response to 23 this talc aspiration issue was tied to a concern 24 over his investment in the talc mine.</p> <p>25 A. Well, I mean, that's just how I'm</p>	<p style="text-align: right;">Page 101</p> <p>1 economic repercussions of doing so. So that's 2 how I fundamentally interpret all those 3 documents. And so, you know, at least for those 4 two decades or so, you see a strong connection 5 between those ideas.</p> <p>6 Q. Okay. And so this is the kind of 7 thing, in your mind, this kind of risk 8 articulated in the 1966 document is the kind of 9 risk that could threaten the golden egg?</p> <p>10 A. Yeah, I mean, that's like a word 11 like "cornerstone of our baby product 12 franchise," that's how I would interpret that 13 phrase, yeah.</p> <p>14 Q. Okay. And so then your criticism 15 of Johnson & Johnson for this talc aspiration 16 risk that's identified in this 1966 document is 17 they don't tell consumers about it?</p> <p>18 MS. PARFITT: Objection, form.</p> <p>19 THE WITNESS: Yeah, no, I'm not 20 hanging my opinion on any one single document. 21 And we kind of talked before about the totality, 22 you know, looking at all of the documents in sum 23 that you see this document and then you see 24 another, you know, I could count them up, but 25 let's just say another ten or a dozen documents</p>

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<p style="text-align: right;">Page 102</p> <p>1 afterwards which make a similar kind of argument 2 about different types of health issues. So, you 3 know, aspiration risk turns out not to be 4 something that the company is concerned about, 5 but then new concerns get raised around 6 asbestos; first asbestos and lung cancer, and 7 then asbestos and ovarian cancer. And those are 8 continually connected then to these replacement 9 products. So I would say that it's indicative 10 of a strategy or an approach that is consistent 11 across time, but it's not that -- that it all 12 boils down to this one issue of aspiration in my 13 mind.</p> <p>14 BY MR. EWALD:</p> <p>15 Q. Well, did you say that the 16 company was not concerned about the aspiration 17 risk? Is that what you said?</p> <p>18 MS. PARFITT: Objection, misstates his 19 testimony.</p> <p>20 THE WITNESS: No, I --</p> <p>21 BY MR. EWALD:</p> <p>22 Q. That's literally what he said.</p> <p>23 A. No, I don't say that they're not 24 concerned about it. They are concerned, but the 25 way in which they're concerned about it -- look,</p>	<p style="text-align: right;">Page 104</p> <p>1 A. Agreed. Yes, absolutely. 2 Q. And so they're saying there's a 3 problem here and we're going to look into it to 4 see whether there's a basis for it, right?</p> <p>5 MS. PARFITT: Objection, misstates 6 testimony.</p> <p>7 THE WITNESS: Again, I would just add 8 to that, there's a problem here that might 9 really hurt our wallet and we should look into 10 it. And I think that's the larger point. 11 That's the important point.</p> <p>12 BY MR. EWALD:</p> <p>13 Q. Well, and you're drawing that 14 because the paragraph that you referenced comes 15 before the "Would it be possible for us to 16 initiate basic work"? It's a structural memo, 17 intuition of importance because it comes first?</p> <p>18 MS. PARFITT: Objection. Misstates hi 19 testimony. He's talking about the totality of 20 the documents.</p> <p>21 THE WITNESS: Yeah, I mean, again, I 22 don't want to hang it all on one document. I 23 think this document is indicative of a larger 24 pattern, is representative of several other 25 documents that you see over this time period of,</p>
<p style="text-align: right;">Page 103</p> <p>1 I mean the company could said, Wow, this might 2 be a real problem. I hope babies aren't choking 3 on this stuff. But that's not what the first 4 paragraph says. The first paragraph says, Look, 5 we have a financial interest in this mine, we 6 have a financial interest to this product. 7 And I think, importantly, drawing it 8 back to the larger argument, that's not what 9 they're telling consumers. Over 100 years 10 they're saying, Your health and safety are our 11 number one priority. You can trust us. The 12 reason why you're going to come to Johnson & 13 Johnson is because of this trust mark that we 14 put on every product." And a paragraph like 15 that seems to run counter, in my view, to that 16 very idea.</p> <p>17 Q. So you talk about the first 18 paragraph after the quote. The second paragraph 19 says:</p> <p>20 "Would it be possible for us to 21 initiate basic work to explore this 22 phenomenon, either obtain data to 23 refute this problem or develop 24 mechanisms to reduce the hazard." 25 That's what Mr. Steinberg says, right?</p>	<p style="text-align: right;">Page 105</p> <p>1 as I said before, connecting a safety issue to 2 an economic concern. And I don't know what the 3 speaker, you know, what Steinberg, you know, was 4 thinking, I couldn't possibly know that or where 5 he wanted to place emphasis.</p> <p>6 But you know, in black and white, the 7 connection between those ideas is there, and in 8 directing other folks at Johnson & Johnson why 9 we should be concerned about this, to me, I read 10 that as we should be concerned about this 11 because it has an economic impact. And you see 12 that same kind of idea in several other 13 documents.</p> <p>14 BY MR. EWALD:</p> <p>15 Q. Okay, so you may not be able to 16 get into Mr. Steinberg's head, but you are able 17 to conclude or figure out whether or not any 18 changes were made to the product or its labeling 19 to address the aspiration risk, correct?</p> <p>20 MS. PARFITT: Objection. Misstates 21 his testimony. In fact, I'm going to broad -- 22 I'm not sure I even understand it.</p> <p>23 Doctor, if you can.</p> <p>24 THE WITNESS: I got a little bit mixed 25 up here. Can you just repeat that?</p>

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<p style="text-align: right;">Page 106</p> <p>1 BY MR. EWALD:</p> <p>2 Q. Sure. Whatever Mr. Steinberg was 3 thinking in 1966, you, Dr. Newman, have the 4 capability to figure out whether or not any 5 changes were made to the Johnson's talc 6 products, labels and/or packaging because of 7 those concerns, right?</p> <p>8 A. Yeah. Yes, I am. Yeah.</p> <p>9 Q. And your position is that nothing 10 was done?</p> <p>11 A. Well, I mean, that wasn't my -- 12 no, that's not my understanding exactly. I 13 thought there was a modification to the cap or 14 something like that, which changed it. But I 15 mean, again, the focus of my inquiry was around 16 cancer, largely. And so I focused there. I 17 find this document informative for the reasons 18 that we talked about already, but, you know, 19 yeah.</p> <p>20 Q. Well, when I asked you earlier 21 about it, before the break, you didn't mention 22 anything about a modification of a cap.</p> <p>23 Did you do further research over the 24 break to remind yourself of that?</p> <p>25 A. No --</p>	<p style="text-align: right;">Page 108</p> <p>1 Frederick Koberna deposition about this 2 aspiration risk issue?</p> <p>3 A. I do recall that, yes.</p> <p>4 Q. So let's look at -- here, we have 5 from your reliance materials, it's the July 2021 6 deposition of Frederick Koberna. And if we go 7 to --</p> <p>8 MS. PARFITT: John, if you will, I'll 9 grab that deposition. We should have it. I'm 10 just looking quickly through the index to try to 11 find out what --</p> <p>12 MR. EWALD: Sure.</p> <p>13 MS. PARFITT: -- bucket it's in. Let 14 me -- give me one moment so I can do that.</p> <p>15 MR. EWALD: Sure.</p> <p>16 MS. PARFITT: You won't have to, 17 maybe, show as much as you wish.</p> <p>18 MR. EWALD: Take your time.</p> <p>19 MS. PARFITT: John, just give us a 20 moment. Fifty-four and 55. Okay, John, just so 21 you know, I'm just handing him the volume that 22 has the depositions. Okay.</p> <p>23 MR. EWALD: Great. Thank you. And so 24 this is the -- yeah, this is the first day of 25 deposition. I'm looking at --</p>
<p style="text-align: right;">Page 107</p> <p>1 MS. PARFITT: Objection.</p> <p>2 THE WITNESS: Not at all. No, I just 3 used the restroom.</p> <p>4 BY MR. EWALD:</p> <p>5 Q. Okay. It could be a real 6 generator of ideas.</p> <p>7 A. No, I think this is really 8 important. If I didn't say something -- I mean, 9 I do have that knowledge. If I didn't say 10 something like that before, it's just because I 11 misunderstood your question. I'm really -- 12 like, there's, you know -- I'm certainly not 13 doing homework when we're not talking, and that 14 is knowledge that I have. I just didn't 15 understand it as being relevant to the question 16 you're asking. So I apologize. I'm sorry.</p> <p>17 Q. Don't apologize.</p> <p>18 So as part of the materials you 19 reviewed, you also reviewed deposition testimony 20 from Frederick Koberna, right?</p> <p>21 A. I did, yes.</p> <p>22 Q. I believe one of the counsel in 23 that room was also at the Frederick Koberna 24 deposition. But that's neither here nor there.</p> <p>25 Do you recall reading testimony in the</p>	<p style="text-align: right;">Page 109</p> <p>1 MS. PARFITT: July 8, I believe. Let 2 me just double-check here. Yes, July 8. The 3 second one was September 14.</p> <p>4 MR. EWALD: Yes.</p> <p>5 MS. PARFITT: Okay, very good. Thank 6 you.</p> <p>7 MR. EWALD: Of course.</p> <p>8 BY MR. EWALD:</p> <p>9 Q. And going to 173. Let me know 10 when you're there.</p> <p>11 A. Okay. Yeah.</p> <p>12 Q. Okay. If you look at -- it's 13 actually 172, I'm sorry, it starts on my 19 14 question:</p> <p>15 "QUESTION: Okay. Did Johnson & 16 Johnson ultimately warn against 17 inhalation of Johnson's Baby Powder by 18 babies?</p> <p>19 ANSWER: Yes, that's on our 20 labeling."</p> <p>21 And if you go down a little bit 22 further, it says -- going now on page 174, line 23 6. And then it -- onto the bottle says: 24 "...quote, 'Keep powder away from 25 child's face to avoid inhalation,'</p>

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<p style="text-align: right;">Page 110</p> <p>1 which can cause breathing problems.'</p> <p>2 Close quotes. Do you see that?"</p> <p>3 ANSWER: Yes.</p> <p>4 QUESTION: So this is a warning</p> <p>5 that was added in response to the</p> <p>6 concerns about inhalation of Johnson's</p> <p>7 Baby Powder by infants, right?"</p> <p>8 There's an objection. And witness:</p> <p>9 "ANSWER: Yes, it was something</p> <p>10 that we would be responsive to</p> <p>11 doctors, and we would put that on</p> <p>12 there. Now, I'm not sure when it was</p> <p>13 added."</p> <p>14 Okay?</p> <p>15 A. Yep.</p> <p>16 Q. You see that?</p> <p>17 A. Yes.</p> <p>18 Q. Does that refresh your</p> <p>19 recollection that, in fact, there was a warning</p> <p>20 put on the bottle relating to inhalation in</p> <p>21 infants?</p> <p>22 A. Yes, yes.</p> <p>23 Q. So that is an instance in which a</p> <p>24 concern was raised relating to the safety of</p> <p>25 Johnson's Baby Powder, and Johnson & Johnson</p>	<p style="text-align: right;">Page 112</p> <p>1 Q. Do you have any opinions that</p> <p>2 Johnson & Johnson's response to the aspiration</p> <p>3 concern that was raised in the 1960s was</p> <p>4 inadequate?</p> <p>5 A. No, I don't.</p> <p>6 Q. So you don't think that Johnson &</p> <p>7 Johnson response misled and confused consumers?</p> <p>8 A. No. Mr. Ewald, are we all set</p> <p>9 with the Koberna deposition?</p> <p>10 Q. Oh, yeah.</p> <p>11 A. Okay.</p> <p>12 MS. PARFITT: I'm going to take it</p> <p>13 away. Thank you.</p> <p>14 BY MR. EWALD:</p> <p>15 Q. Now, you also, on page 15,</p> <p>16 paragraph 57, talk about the Daniel Cramer</p> <p>17 study, 1982, correct?</p> <p>18 A. Correct, yes.</p> <p>19 Q. And you note that the study is</p> <p>20 significant, paragraph 57, because it raised the</p> <p>21 possibility that the link between talc and</p> <p>22 cancer could be caused by a), fibers and talc</p> <p>23 itself, and b), those fibers could implant in</p> <p>24 the body via process of translocation, moving</p> <p>25 from the perineal area to the ovaries, right?</p>
<p style="text-align: right;">Page 111</p> <p>1 acted in response to that concern, correct?</p> <p>2 A. Yes. Although I would argue that</p> <p>3 it's a false equivalence to -- to -- the</p> <p>4 inhalation warning to pulling a product and</p> <p>5 replacing it with a cornstarch product. Those</p> <p>6 aren't the same. You know, when there are</p> <p>7 internal conversations talking about how talc</p> <p>8 itself is central to the business, is the golden</p> <p>9 egg, is the cornerstone of our franchise, we</p> <p>10 have an investment in a talc mine. That's</p> <p>11 not -- and so we should put a warning on it, is</p> <p>12 that we're going to pull the product and replace</p> <p>13 it with cornstarch.</p> <p>14 And so, you know, that they were</p> <p>15 responsive about this does not, in my mind,</p> <p>16 imply that they are responsive in all health</p> <p>17 issues or something like that.</p> <p>18 Q. Well, this is their response in</p> <p>19 the document that we were just talking about</p> <p>20 from 1966, where you noted that they have an</p> <p>21 investment in a talc mine and that it's a</p> <p>22 cornerstone of our franchise, right?</p> <p>23 A. Yeah. If we're talking about,</p> <p>24 just in reference to that 1966 document we were</p> <p>25 talking about before, sure, yeah.</p>	<p style="text-align: right;">Page 113</p> <p>1 A. Correct, yes.</p> <p>2 Q. And do you feel like you have the</p> <p>3 expertise to offer an opinion as to whether a</p> <p>4 particular epidemiological study is significant?</p> <p>5 A. No, I --</p> <p>6 MS. PARFITT: Object to form.</p> <p>7 THE WITNESS: No, I do not. I do not.</p> <p>8 And that's not why I'm citing it here.</p> <p>9 BY MR. EWALD:</p> <p>10 Q. Okay. Well, you said those</p> <p>11 very -- those are your words, correct? The</p> <p>12 Cramer study is significant because it raised</p> <p>13 the possibility about the link?</p> <p>14 A. Yes. It's significant because it</p> <p>15 raised -- publicly, it raised a link between</p> <p>16 talc and cancer use. And my understanding is</p> <p>17 that it is one of the first mentions in the</p> <p>18 peer-reviewed literature that prior to then,</p> <p>19 that the concern about talc had been asbestos,</p> <p>20 but asbestos as it related to lung cancer. And</p> <p>21 then after the Cramer study, it wasn't lung</p> <p>22 cancer, it was potentially ovarian cancer.</p> <p>23 And you see documents, internal</p> <p>24 documents from J&J which reflect that kind of</p> <p>25 shift about, Well, what's the relevant health</p>

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1 concern? So significant for that reason in 2 trying to understand this timeline of events. 3 Q. And it's your opinion that J&J 4 misled, deceived consumers by not letting them 5 know that the Cramer study had been published in 6 1982 and raised the possibility of a link 7 between talc and ovarian cancer? 8 A. No. I think what is -- talking 9 about this very specific time period, let's say 10 1982 to 1987, is now there are conversations 11 about asbestos and ovarian cancer in the 12 discussions about cornstarch. And so, okay, 13 we've got this cornstarch replacement and it's 14 going to address these health concerns about 15 talc and ovarian cancer. And so we're going to 16 replace the products. Let's do all this market 17 research to replace the products. And then that 18 never happens. 19 And so that, in my mind, is the 20 misleading or deceptive part is that the company 21 has very deliberately taken a strategy to 22 address the health concerns through product 23 replacement, and then that replacement never 24 happens and the reason for it isn't communicated 25 to consumers.	Page 114 1 Canadian resident, I take things that Health 2 Canada says seriously, yeah. 3 Q. Fair enough. But you don't, I 4 don't believe, cite in your report other 5 regulatory bodies, for example, what the various 6 FDA -- various us federal regulatory bodies have 7 said about the potential link between talc and 8 ovarian cancer, do you? 9 MS. PARFITT: Objection. 10 THE WITNESS: Again, but I would come 11 back to, but what are they telling consumers? 12 And they're not communicating to consumers in, 13 look, there's conflicted evidence. They're 14 telling consumers, absolutely not. Don't worry 15 about it. Trust us. You can trust us in the 16 same way that you've trusted us for 100 years. 17 And just, there's a mounting pile of information 18 that's out there that at least is raising 19 questions about that. Internally, they're 20 having discussions about those questions, but 21 then the communication to consumers is very, 22 very different. 23 BY MR. EWALD: 24 Q. Okay. So there's a scientific 25 question raised about the safety of the product
Page 115 1 Q. But you also don't know the 2 reason for it, do you? 3 MS. PARFITT: Objection, form. 4 THE WITNESS: Again, I mean, we can -- 5 no, I don't -- no, I don't. Just to be fair, I 6 don't know. Yeah. 7 BY MR. EWALD: 8 Q. And do you know, in assessing 9 whether a particular epidemiological study is 10 significant, do you think that the FDA is better 11 situated than you in making that assessment? 12 MS. PARFITT: Objection, form. 13 THE WITNESS: Yeah. You know, it's 14 just an area that I'm not well -- I know what I 15 don't know. And so that's outside my expertise. 16 So I wouldn't be able to comment on which 17 regulatory body is better than which, or what 18 kind of standard or anything like that, yeah. 19 BY MR. EWALD: 20 Q. Well, you say which regulatory 21 body is better than which, but you cite a lot in 22 your document to Health Canada, correct? 23 A. Because you do have a national 24 health service that is saying we have a concern 25 about this product. I mean, as a current	Page 115 1 externally. There are discussions about that 2 question that's been raised. There are 3 discussions within Johnson & Johnson about the 4 question that's been raised externally. And 5 it's your opinion then that if such discussions 6 take place that should be communicated to 7 consumers, correct? 8 A. It's my opinion that if there 9 are -- there are credible risks, and I'm coming 10 back to, you know, we talked a lot about 11 cornstarch, and I think cornstarch and the 12 history of cornstarch is exemplary because it -- 13 it shows that the company was taking those risks 14 seriously, that they spent over a decade trying 15 to develop a replacement product. So it's not 16 just at the level of, do you have to communicate 17 everything you discuss internally to the public? 18 That's not what I'm saying. 19 But if you take actions over a decade 20 because you think there's a health risk, then 21 there is some responsibility to communicate some 22 portion of that to consumers and not just say, 23 absolutely, without a question, without a doubt, 24 it's safe. 25 Q. What expertise/training do you

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<p style="text-align: right;">Page 118</p> <p>1 have just to make the opinion that you just did?</p> <p>2 A. I mean, my years of training as</p> <p>3 an expert in consumer behavior and consumer</p> <p>4 psychology, that when you speak to consumers in</p> <p>5 absolutes, that it's very different than talking</p> <p>6 about even a glimmer of a possibility otherwise.</p> <p>7 And I'll just give an example. So</p> <p>8 this is one of the papers I published. If you</p> <p>9 talk about pure natural spring water versus</p> <p>10 spring water with 0.001 percent additive or</p> <p>11 impurity, you get an enormous drop off in</p> <p>12 people's willingness to buy the product, that</p> <p>13 it's not linear, that any shred of a doubt or a</p> <p>14 possibility of impurity or something not being</p> <p>15 quite right with the product is enough to</p> <p>16 dramatically change consumers' perceptions.</p> <p>17 And so I think in this case, by not at</p> <p>18 least acknowledging the possibility and that</p> <p>19 there was evidence and evidence that they were</p> <p>20 taking seriously, seriously enough to take</p> <p>21 actions to develop a replacement product, to me,</p> <p>22 is misleading.</p> <p>23 Q. Well, what -- can you identify</p> <p>24 any peer-reviewed published paper that states</p> <p>25 that there's a glimmer of possibility of a</p>	<p style="text-align: right;">Page 120</p> <p>1 answer.</p> <p>2 You can try again, Doctor.</p> <p>3 BY MR. EWALD:</p> <p>4 Q. Well, I heard -- no, I mean, what</p> <p>5 I heard, that's fair. I heard what you tell</p> <p>6 your intro class, what else?</p> <p>7 A. And again, coming back to the</p> <p>8 example of spring water, that there is a</p> <p>9 qualitative difference between saying this is</p> <p>10 pure natural spring water and spring water with</p> <p>11 0.01 percent additive, and that's not a linear</p> <p>12 change. And so just the same way that saying,</p> <p>13 Well, there is the potential for a health risk,</p> <p>14 and you know, we're kind of talking about the</p> <p>15 study that I conducted on my own earlier, right?</p> <p>16 Just even disambiguating things and</p> <p>17 acknowledging that there is evidence which finds</p> <p>18 a link changes how much people trust the</p> <p>19 company. And yes, absolutely, I think that is</p> <p>20 misleading or potentially confusing. Mr. Ewald,</p> <p>21 you froze.</p> <p>22 Q. Dr. Newman, you froze after</p> <p>23 saying "acknowledging." I'm sorry, I didn't</p> <p>24 hear anything after that. That was the first</p> <p>25 hiccup.</p>
<p style="text-align: right;">Page 119</p> <p>1 health risk associated with a product, the</p> <p>2 company should communicate that to consumer.</p> <p>3 A. If there's -- I don't know</p> <p>4 what -- I mean, we would talk about best</p> <p>5 practices, you know, if I'm teaching intro to</p> <p>6 marketing, intro to consumer behavior, we would</p> <p>7 talk about best practices. And certainly up</p> <p>8 there with best practices are, you know, you</p> <p>9 can't engage in false advertising, you can't</p> <p>10 mislead, you can't misstate product benefits,</p> <p>11 those kinds of things. So, I mean, those --</p> <p>12 these -- if you were to enter business school,</p> <p>13 this is kind of foundational to the training</p> <p>14 about what are, you know, acceptable principles</p> <p>15 or guiding principles or best practices.</p> <p>16 Q. Well, are you -- is it your</p> <p>17 opinion that it is misleading to customers and</p> <p>18 deceptive to customers not to provide them</p> <p>19 information about the glimmer of a possibility</p> <p>20 that a product could cause harm?</p> <p>21 A. It is, yes. Yes, that is my</p> <p>22 testimony, yes.</p> <p>23 Q. And then what do you rely on that</p> <p>24 form?</p> <p>25 MS. PARFITT: Objection. Asked an</p>	<p style="text-align: right;">Page 121</p> <p>1 A. It was probably very smart.</p> <p>2 Q. I'm sure it was. The court</p> <p>3 reporter, if she got it, can read it back. It</p> <p>4 was literally after the word "acknowledging."</p> <p>5 A. I'll just restate it just to make</p> <p>6 it easier on everybody. But just what we're</p> <p>7 talking about with the spring water example,</p> <p>8 there's a difference between communicating in</p> <p>9 absolutes and presenting a fuller picture of the</p> <p>10 information. And that it's misleading to not</p> <p>11 acknowledge these risks that the company was</p> <p>12 taking seriously, as evidenced by all of the</p> <p>13 work that they're doing on replacement products,</p> <p>14 et cetera.</p> <p>15 Q. Okay. I saw in your reliance</p> <p>16 list or reference list a couple of documents</p> <p>17 related to FDA citizen petition in 2008, 2000,</p> <p>18 1994 and the response in 2014. I didn't see</p> <p>19 reference to FDA's 1986 response to a citizen</p> <p>20 petition related to talc. Is that something</p> <p>21 that you've seen before?</p> <p>22 THE REPORTER: I'm sorry. I'm not</p> <p>23 catching what he's saying.</p> <p>24 MS. PARFITT: John, unfortunately, the</p> <p>25 reporter was unable to catch your question. If</p>

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<p>1 you wouldn't mind repeating that.</p> <p>2 MR. EWALD: No worries.</p> <p>3 MS. PARFITT: Thank you.</p> <p>4 BY MR. EWALD:</p> <p>5 Q. So I'll break this down. You</p> <p>6 recall, Dr. Newman, that in your reference list,</p> <p>7 you include, some documents relating to FDA</p> <p>8 citizen petitions and responses in the 2000s?</p> <p>9 A. Yes, correct. Yeah.</p> <p>10 Q. And are you familiar with an FDA</p> <p>11 response in 1986 to a talc related citizen</p> <p>12 petition?</p> <p>13 A. I believe I am familiar with that</p> <p>14 document, yes.</p> <p>15 Q. Well, I'm going to pull it up</p> <p>16 now. I'll mark it an exhibit. And, Michelle, I</p> <p>17 don't know if it's something you guys set up, or</p> <p>18 there's only a couple parts in the show, but</p> <p>19 what do you need me to do?</p> <p>20 MS. PARFITT: John, I'm not -- it is</p> <p>21 not in our notebook.</p> <p>22 MR. EWALD: All right, so let me first</p> <p>23 put it in the chat.</p> <p>24 MS. PARFITT: John, I'm just going to</p> <p>25 swing around so I can see it as well. Okay.</p>	<p style="text-align: right;">Page 122</p> <p>1 name, Douillet, with a date of July 11, 1986.</p> <p>2 Let me look at it a little bit bigger.</p> <p>3 A. Yep.</p> <p>4 Q. And it says:</p> <p>5 "This responds to your November</p> <p>6 8, 1983 petition requesting that</p> <p>7 cosmetic talc be labeled with an</p> <p>8 asbestos warning statement,</p> <p>9 information on asbestos particle size</p> <p>10 and the proportion of talc impurities</p> <p>11 in the product."</p> <p>12 Is this ringing any bell? Is this</p> <p>13 something that you've seen, Dr. Newman?</p> <p>14 A. I don't believe I have ever seen</p> <p>15 this document.</p> <p>16 Q. Okay. Goes on to state:</p> <p>17 "You assert that, because the</p> <p>18 mine of talc almost invariably</p> <p>19 includes the mining of asbestos as</p> <p>20 well, cosmetic talc may contain</p> <p>21 significant amounts of asbestos</p> <p>22 particles that present inhalation</p> <p>23 hazard to humans. Also, you cite</p> <p>24 references to substantiate that</p> <p>25 significant amounts of asbestos have</p>
<p>1 MR. EWALD: Sure. Okay, let me know</p> <p>2 when it's uploaded. It's looks like it's got</p> <p>3 across the wire. Should have a fancy red ribbon</p> <p>4 on the front.</p> <p>5 MS. PARFITT: There you go.</p> <p>6 THE WITNESS: Yes.</p> <p>7 BY MR. EWALD:</p> <p>8 Q. All right. And any point in time</p> <p>9 if you need to review part of it, let me know.</p> <p>10 I'm just going to talk about a couple of pages</p> <p>11 to get started, we'll mark this.</p> <p>12 MS. PARFITT: Yeah, if I could just</p> <p>13 ask. Can just run down to the Bates number on</p> <p>14 that. That may be why I wasn't able to find the</p> <p>15 document.</p> <p>16 MR. EWALD: Yeah, no worries. This</p> <p>17 one actually just a "D." It's an internal</p> <p>18 document. It's D-7214, Exhibit number.</p> <p>19 MS. PARFITT: D 7214.</p> <p>20 MR. EWALD: Yes.</p> <p>21 MS. PARFITT: Thank you.</p> <p>22 BY MR. EWALD:</p> <p>23 Q. Yes, and what we see here on page</p> <p>24 3 of the PDF, it is a letter from the FDA to</p> <p>25 Mr. Phillippe. I don't know how to say his</p>	<p style="text-align: right;">Page 123</p> <p>1 been found in commercial talc samples,</p> <p>2 that asbestos inhalation is hazardous</p> <p>3 to humans, and that asbestos</p> <p>4 contaminants in talc will produce</p> <p>5 toxicological responses when inhaled."</p> <p>6 Goes on to say that:</p> <p>7 "However, your petition has not</p> <p>8 persuaded us that cosmetic talc that</p> <p>9 is presently being produced contains</p> <p>10 significant amounts of asbestiform</p> <p>11 minerals."</p> <p>12 Then it talks about:</p> <p>13 "During the early 1970s, FDA</p> <p>14 became concerned about the possibility</p> <p>15 that cosmetic talc did contain</p> <p>16 significant amounts of this material.</p> <p>17 The agency received several reports</p> <p>18 about such contamination. However, at</p> <p>19 that time, the analytical procedures</p> <p>20 for determining asbestos in talc were</p> <p>21 not fully developed and most of the</p> <p>22 analytical work was conducted without</p> <p>23 scientific agreement as to which</p> <p>24 methods were well-suited for the</p> <p>25 identification of asbestiform minerals</p>

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<p style="text-align: right;">Page 126</p> <p>1 in talc."</p> <p>2 Let me stop there for a moment. Did I</p> <p>3 read that correctly?</p> <p>4 A. Yeah. Yeah.</p> <p>5 MS. PARFITT: And, John, may I ask a</p> <p>6 favor, if you will? The Doctor has indicated</p> <p>7 he's never seen this document before. I don't</p> <p>8 have it in his exhibit list, as well. So if he</p> <p>9 could have an opportunity, and you can either</p> <p>10 come back to it, or he can read it now, to read</p> <p>11 the entire doc -- he's never seen this document</p> <p>12 and I know we're reading parts for it and you're</p> <p>13 being very fair about that, but he's never seen</p> <p>14 the document before and I can't tell from what's</p> <p>15 on the screen what's before and what's after.</p> <p>16 MR. EWALD: Fair. And maybe one way</p> <p>17 to do it, the letters, I see two pages, I also</p> <p>18 want to show him something else about it, but</p> <p>19 there's also a lot of analytical data in the</p> <p>20 back part.</p> <p>21 MS. PARFITT: Yes.</p> <p>22 MR. EWALD: So if you want, one idea</p> <p>23 was considering if you want to look at it over</p> <p>24 the lunch break.</p> <p>25 MS. PARFITT: Yes.</p>	<p style="text-align: right;">Page 128</p> <p>1 happy to break now for lunch or continue on,</p> <p>2 whatever you guys prefer, and whatever the court</p> <p>3 reporter prefers.</p> <p>4 MS. PARFITT: Do you want to take a</p> <p>5 quick break now or can you go a little longer?</p> <p>6 THE WITNESS: I can go -- yeah. You</p> <p>7 know, I'm a late lunch eater. So I can go a</p> <p>8 little bit longer and then maybe 30 minutes or</p> <p>9 something like that.</p> <p>10 MS. PARFITT: Yeah, John. If we can</p> <p>11 do this: Give us three minutes. We're going to</p> <p>12 see if we can get something ordered here so we</p> <p>13 can keep moving here, just give us three</p> <p>14 minutes.</p> <p>15 -- LUNCH TAKEN AT 12:42 P.M.</p> <p>16 -- RESUME AT 1:43 P.M.</p> <p>17 BY MR. EWALD:</p> <p>18 Q. All right. Dr. Newman, did you</p> <p>19 have a chance to take a look at the 1986 FDA</p> <p>20 response to citizens petition?</p> <p>21 A. I read the first two pages and</p> <p>22 then there was a bunch of material at the end</p> <p>23 that I wasn't able to review.</p> <p>24 Q. Well, we will get to that in a</p> <p>25 moment, but set it aside, but not too far from</p>
<p style="text-align: right;">Page 127</p> <p>1 MR. EWALD: I'd be happy to go back to</p> <p>2 it.</p> <p>3 MS. PARFITT: Yeah. If we can move on</p> <p>4 from this, John, 'til we get a copy of it, he</p> <p>5 can take a look at it and then we can come back</p> <p>6 to it.</p> <p>7 MR. EWALD: Sure.</p> <p>8 MS. PARFITT: Because it's got a lot</p> <p>9 of information at the very end.</p> <p>10 MR. EWALD: Yeah. No, no, I agree.</p> <p>11 Before I forget, Leila, it's Exhibit 7, right?</p> <p>12 THE REPORTER: Yes, it is, counsel.</p> <p>13 EXHIBIT NO. 7: Food and Drug</p> <p>14 Administration Certificate - D-7214</p> <p>15 (1986 FDA).</p> <p>16 MS. PARFITT: All right. Thank you.</p> <p>17 MR. EWALD: Sure. And let me know if</p> <p>18 you have any problems accessing it from the</p> <p>19 chat.</p> <p>20 MS. PARFITT: Very good.</p> <p>21 MR. EWALD: I'm going to make a</p> <p>22 Post-It note, because if I don't, I'm not going</p> <p>23 to go back to it. Hold on. We will get back to</p> <p>24 that one. Although, let me pause. It is 12:41</p> <p>25 where I am. We've gone another hour. I am</p>	<p style="text-align: right;">Page 129</p> <p>1 where you are.</p> <p>2 A. Okay.</p> <p>3 Q. And if you look at your report.</p> <p>4 A. Yeah.</p> <p>5 Q. On paragraph 52, which is on page</p> <p>6 13.</p> <p>7 A. Okay, I'm there. Yep.</p> <p>8 Q. And you see that says:</p> <p>9 "In 1974 it was noted by</p> <p>10 executives at Johnson & Johnson that</p> <p>11 'During the past couple of years, our</p> <p>12 need for a non-talc dusting powder has</p> <p>13 increased as a direct result of the</p> <p>14 talc/asbestos controversy.'"</p> <p>15 That's what it says, right?</p> <p>16 A. Yes, that's what it says.</p> <p>17 Q. What, based on your review of</p> <p>18 documents in this case, what is your</p> <p>19 understanding of the talc/asbestos controversy</p> <p>20 that's referred to happening in the early 1970s?</p> <p>21 A. Based on my understanding, the</p> <p>22 talc/asbestos controversy was regarding the</p> <p>23 presence of asbestos in talc.</p> <p>24 Q. Okay. And do you have an</p> <p>25 understanding as to any details relating to that</p>

1 controversy? 2 A. Yeah, so there are -- I mean, 3 again, this wasn't the, you know, the focus of 4 my review. But I did encounter documents, you 5 know, which talked about there being J&J, 6 internal documents about the detection of 7 asbestos. I believe there's a document from 8 right around the same time, I think, 1975 or 9 something, which talks about the potential for, 10 you know, asbestiform fibers to be detected. 11 And so, yeah those kinds of documents. That's 12 about it. 13 Q. Is the document that you're 14 referring to, asbestiform fibers, is that the 15 one you're quoting, a couple paragraphs up in 16 50? 17 A. No. This is -- yeah, okay. I 18 mean, yeah, that's definitely one of them. I 19 think there was another one that I have -- I 20 made note of that the last five -- you have to 21 forgive me, I'm new to the Bates numbering 22 system. But the last five are 26989, I believe 23 that's a review of present status of talc 24 safety. 25 Q. Yep. Okay, so on that one, we're	Page 130 1 including that. 2 A. Yeah. 3 Q. Just starting on page one. And 4 for the record, we are marking - I don't think I 5 said this - as Exhibit 8 a Johnson & Johnson 6 internal memo dated April 26, 1973, with subject 7 line "Windsor minerals and talc." 8 EXHIBIT NO. 8: Johnson & Johnson 9 internal memo, "Windsor minerals and 10 talc." April 26, 1973. 11 BY MR. EWALD: 12 Q. And paragraph 1 states that: 13 "It is our joint conclusion that 14 we should not rely on the 'Clean Mine' 15 approach as a protective device for 16 Baby Powder in the current Asbestos or 17 Asbestos-Form controversy. We believe 18 this mine to be very clean; however, 19 we are also confident that fiber 20 forming or fiber type materials could 21 be found. The usefulness of the 22 'clean mine' approach for asbestos 23 only is over." 24 Did I read that correctly? 25 A. Yes.
Page 131 1 actually going to talk about that one next. 2 Let's first, though, let's talk about the 3 document you're referring to in paragraph 50. 4 It is J&J 0025188. I will mark it as an 5 exhibit. If it helps at all, that was also in 6 your materials. It was -- starts with the 7 number 0242, if that means anything to you. 8 MS. PARFITT: Yeah, just give me a 9 moment here, John, and we'll try and pull it up 10 for him. 11 MR. EWALD: Sure. 12 MS. PARFITT: And I'm sorry, John, 13 again, you said 25188? 14 MR. EWALD: Yep. 15 MS. PARFITT: Just give me one minute 16 here. Yeah. 242. Ready? 17 THE WITNESS: Yes. 18 MS. PARFITT: 242. 19 THE WITNESS: Mr. Ewald, I'm going to 20 go ahead and pull that full document because I 21 know that there's some text at the end, too, 22 that that is important to my opinion. 23 BY MR. EWALD: 24 Q. And, yeah, I'm going to talk 25 about a couple different parts of the document,	Page 133 1 Q. How do you interpret that 2 paragraph? 3 A. We're going to detect some stuff 4 that looks like asbestos. 5 Q. And when they say "The usefulness 6 of the 'clean mine' for asbestos only is over," 7 what do they mean in your view? 8 A. I interpret that as -- as 9 referring to some kind of claim that you're not 10 going to find anything here that looks like 11 asbestos; we shouldn't take this strategy in 12 talking about our mine this way, and instead we 13 should acknowledge that you might find some 14 stuff that looks like asbestos. 15 Q. When you say "stuff that looks 16 like asbestos," you're talking about the shape? 17 A. I was just responding to how -- 18 you're asking me, kind of, how I interpret 19 paragraph 1 -- 20 Q. Yeah. 21 A. -- and I was paraphrasing it, 22 that we're going to find, you know, we're going 23 to find some fibers that look like asbestos. 24 Q. Right? And I'm not -- you cited 25 this document in your report and you quote from

<p style="text-align: right;">Page 134</p> <p>1 it, right?</p> <p>2 A. That's correct, yes.</p> <p>3 Q. Right. So I am only asking</p> <p>4 what -- how you interpreted it when you reviewed</p> <p>5 it --</p> <p>6 A. Sure.</p> <p>7 Q. -- you included it in your</p> <p>8 report. And so when you're saying looks like</p> <p>9 asbestos, are you saying that it has the</p> <p>10 morphology of asbestos? Is that what you're</p> <p>11 saying?</p> <p>12 MS. PARFITT: Objection, form.</p> <p>13 THE WITNESS: Yeah, I'm not -- I'm not</p> <p>14 able -- you know, I am not well-versed enough in</p> <p>15 this issue to know, you know, when whether --</p> <p>16 you know, kind of different types of morphology</p> <p>17 and categorization. All I could say is that I</p> <p>18 interpret that in plain language to say, you</p> <p>19 know, the chances that we detect something that</p> <p>20 registers as asbestos is high enough that we</p> <p>21 shouldn't claim that our minds never have</p> <p>22 anything that looks like asbestos in them.</p> <p>23 BY MR. EWALD:</p> <p>24 Q. Right. So if you go to the next</p> <p>25 page 2, and it's paragraph b., do you see that,</p>	<p style="text-align: right;">Page 136</p> <p>1 tremolite or fibrous talc. Our Baby</p> <p>2 Powder contains talc fragments</p> <p>3 classifiable as fiber. Occasionally</p> <p>4 sub-trace quantities of tremolite or</p> <p>5 actinolite are identifiable (optical</p> <p>6 Microscope) and these might be</p> <p>7 classified as asbestos fiber."</p> <p>8 How do you interpret that? What's</p> <p>9 being said in that paragraph?</p> <p>10 A. Well, there's a few different</p> <p>11 ideas. But the first part of that paragraph, I</p> <p>12 interpret it as the testing guidelines at the</p> <p>13 FDA are changing and we shouldn't rely on what</p> <p>14 has escaped detection before to continue to</p> <p>15 escape detection. And so that as the standard</p> <p>16 shifts, there is likely to be detection of</p> <p>17 tremolite and actinolite, you know, if they use</p> <p>18 a standard or a procedure of using an optical</p> <p>19 microscope.</p> <p>20 Q. Well, and then does it also talk</p> <p>21 about there in the middle that if talc, in the</p> <p>22 form of fiber, is identified, it could be</p> <p>23 included within the cosmetic division in the FDA</p> <p>24 food division ban? That's what they're saying</p> <p>25 there. Do you agree?</p>
<p style="text-align: right;">Page 135</p> <p>1 as in "boy"?</p> <p>2 A. Yeah. This is like 4 b?</p> <p>3 Q. Yes, sir.</p> <p>4 A. Yeah. Okay.</p> <p>5 Q. And so it says:</p> <p>6 "As for Baby Powder, the entire</p> <p>7 thrust of our communications with the</p> <p>8 FDA is concentrated on asbestos as</p> <p>9 harmful fiber-like material.</p> <p>10 Sophisticated techniques have been</p> <p>11 proposed to make sure that fiber</p> <p>12 formed materials present in samples</p> <p>13 were identified as being asbestos.</p> <p>14 The implications that all other fiber</p> <p>15 forms, if present, were talc or other</p> <p>16 minerals and these were safe. This</p> <p>17 posture will no longer be satisfactory</p> <p>18 if the FDA...Division, which is moving</p> <p>19 more rapidly than Cosmetic Division,</p> <p>20 publishes a standard, it will probably</p> <p>21 be to ban asbestos-form or fibrous</p> <p>22 material in talc. That could</p> <p>23 eliminate the current uses of talc in</p> <p>24 packaging materials. These talcs</p> <p>25 contain widely varying amounts of</p>	<p style="text-align: right;">Page 137</p> <p>1 MS. PARFITT: Objection, form.</p> <p>2 THE WITNESS: I would -- again, I</p> <p>3 would interpret that, yeah, as that the FDA</p> <p>4 could categorize it that way using essentially a</p> <p>5 different method or standard.</p> <p>6 BY MR. EWALD:</p> <p>7 Q. Right. When we say categorize it</p> <p>8 a different way, they could categorize talc in</p> <p>9 the shape of a fiber as something that would be</p> <p>10 banned, right?</p> <p>11 MS. PARFITT: Objection, form. And</p> <p>12 again, John, I think he's indicated that this is</p> <p>13 not the different fiber types, it's not</p> <p>14 something that is his expertise.</p> <p>15 BY MR. EWALD:</p> <p>16 Q. I understand. But he does cite</p> <p>17 to it, and I have some questions on how it</p> <p>18 impacts his opinion. So I want to get</p> <p>19 appreciation of how he understands it.</p> <p>20 A. Sure. I would say that my</p> <p>21 interpretation of how this is worded is, again,</p> <p>22 solely around, kind of, outward appearances,</p> <p>23 right? I mean, kind of going back to this idea</p> <p>24 that health and safety are our number one</p> <p>25 concerns, right? There's like nothing about</p>

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<p style="text-align: right;">Page 138</p> <p>1 that here. It's just like, well, how's it going 2 to look if now suddenly there's detection of 3 asbestos in our product? And so there's a 4 subtext here to this document that I think is 5 important to my opinion.</p> <p>6 Q. Okay, well, they say if the FDA 7 food division standard is adopted, that could 8 eliminate the current uses of talc and packaging 9 materials, right?</p> <p>10 A. Yes.</p> <p>11 Q. And so if a business is trying to 12 be proactive and is identifying that a current 13 product that's currently constituted may be 14 banned by a changing regulation, it makes sense 15 to explore opportunities, other opportunities, 16 right?</p> <p>17 MS. PARFITT: Objection, form.</p> <p>18 THE REPORTER: Sorry. Could you just 19 repeat the last part, counsel? I didn't quite 20 catch you.</p> <p>21 BY MR. EWALD:</p> <p>22 Q. Sure. If a company -- isn't 23 it -- withdrawn.</p> <p>24 Wouldn't a prudent company who 25 identifies the possibility that a standard</p>	<p style="text-align: right;">Page 140</p> <p>1 They also talk about the detection of talc in 2 their talc product, right?</p> <p>3 A. Yes, correct. Yes.</p> <p>4 Q. And so if there's going to be a 5 standard that is potentially promulgated that 6 would ban the current product as manufactured, 7 it makes sense to identify potential 8 alternatives to the currently constituted 9 product, correct?</p> <p>10 MS. PARFITT: Objection, form.</p> <p>11 THE WITNESS: Yeah, I mean, again, 12 maybe I'm getting a little bit confused by the 13 question. So I just interpret b. as saying, 14 4 b. as the standards are shifting and there may 15 be detection of things, there may be detection 16 of asbestos in our product. And then it goes on 17 to 5 to say, Well, what are we going to do about 18 it? And part of what they're considering is 5 19 c., Well, an obvious answer would be cornstarch.</p> <p>20 BY MR. EWALD:</p> <p>21 Q. Okay. You talked about, again, 22 your understanding. You didn't include the part 23 where they say that there's a definition that 24 could be promulgated, that would include banning 25 products that have talc in the shape of fibers,</p>
<p style="text-align: right;">Page 139</p> <p>1 change may result in a product that's currently 2 constituted being banned look at alternative 3 options if that ban came to fruition?</p> <p>4 MS. PARFITT: Objection, form.</p> <p>5 THE WITNESS: I'm having a little bit 6 of trouble parsing it, but the way that I'm 7 interpreting that question is like in what I 8 mention in my report is I go to five sub point 9 C, which is, Okay, well, let's use cornstarch. 10 It doesn't have any of these health risks. It's 11 not going to have any fibers that could be 12 potentially harmful and it's assimilated into 13 the body. So that could be a good option for 14 us.</p> <p>15 BY MR. EWALD:</p> <p>16 Q. Well, where does it say in 4 b. 17 that the company, i.e. Johnson & Johnson, is 18 worried about the safety of its talc products?</p> <p>19 A. I don't think it says that 20 they're worried about the safety of their 21 product. They're worried about -- I interpret 22 4 b. as they're worried about detection. 23 They're worried about the detection of asbestos 24 in their product.</p> <p>25 Q. Well, they talk about asbestos.</p>	<p style="text-align: right;">Page 141</p> <p>1 right?</p> <p>2 MS. PARFITT: Objection, form.</p> <p>3 THE WITNESS: I mean, I think this 4 might be drifting into a degree of expertise 5 that I'm really not qualified to speak on in 6 things that, for instance, may look like 7 asbestos but aren't really asbestos. And I'm 8 not able to make those kinds of distinctions or 9 ferret that out here.</p> <p>10 And I just -- in as plain of English 11 as I can interpret that -- that paragraph, it's, 12 you know, there's going to be detection and 13 just, I mean, to kind of go back to the 14 beginning of the document, it seems to be framed 15 right around what we're telling people. You 16 know, are we -- are we using this kind of "clean 17 mine" approach? Should we be telling people 18 there's no asbestos in our product? And then I 19 interpret 4 b. as, Well, one thing that could 20 change is that with these new standards, there's 21 going to be detection of asbestos in our 22 product. And I would say, that's really the 23 limit of my understanding of that document.</p> <p>24 BY MR. EWALD:</p> <p>25 Q. Well, I understand that the</p>

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<p style="text-align: right;">Page 142</p> <p>1 limitations that you're talking about, and what 2 I'm trying to figure out is what you understand 3 about the controversy in the early 1970s, 4 because what you've stated many times, I 5 believe, just tell me I'm right, and my 6 understanding that J&J's response to what is 7 referred to as sometimes as talc/asbestos 8 controversy in the early 1970s is proof that the 9 risk presented was credible, right?</p> <p>10 A. I would say that their actions 11 over -- beginning in the 1970s through the 12 1980s, in my mind, lend credence to the idea 13 that they believe that the risks were credible. 14 Yeah.</p> <p>15 Q. Okay. And so in trying to 16 understand what that talc/asbestos controversy 17 is, we're talking about a document that you cite 18 and quote from in your report. And if we go 19 back to paragraph 1, it talks about clean mine 20 approach. It says:</p> <p>21 "We believe this mine to be very 22 clean; however, we are also confident 23 that fiber forming or fiber type 24 minerals could be found." 25 In that phrase, starting with,</p>	<p style="text-align: right;">Page 144</p> <p>1 possible regulation that's out there that could 2 be promulgated from FDA food division that 3 include not only asbestos, but also talc in a 4 fibrous form, correct?</p> <p>5 MS. PARFITT: And you're asking him, 6 is that what it says? Is that the question, 7 John? Is that what that says?</p> <p>8 BY MR. EWALD:</p> <p>9 Q. Yeah, is that how he understands 10 it?</p> <p>11 MS. PARFITT: Well, that's a 12 different --</p> <p>13 THE WITNESS: Yeah. That's not --</p> <p>14 MS. PARFITT: -- question.</p> <p>15 THE WITNESS: That's now exactly how I 16 understand that sentence. I mean -- or sorry, 17 that paragraph that I interpreted that paragraph 18 as, We might detect stuff that registers as 19 asbestos; this new method might detect stuff 20 which could -- again, we're getting outside my 21 expertise. But as you could consider me a 22 layperson on this issue, and as a layperson, I 23 interpret that as saying, Maybe it actually is 24 asbestos, you know, or it's something that 25 registers asbestos, but we're going to get a</p>
<p style="text-align: right;">Page 143</p> <p>1 "however," do you see asbestos anywhere in that 2 phrase?</p> <p>3 MS. PARFITT: Objection, form.</p> <p>4 THE WITNESS: I do recognize the word 5 "however," yes.</p> <p>6 BY MR. EWALD:</p> <p>7 Q. Do you see that phrase: 8 "however, we are also confident 9 that fiber forming or fiber type 10 minerals could be found."</p> <p>11 Do you see the word "asbestos" appear 12 anywhere?</p> <p>13 A. No. Not in that part of the 14 sentence, no.</p> <p>15 Q. Right. And the next sentence 16 says:</p> <p>17 "The usefulness of the 'Clean 18 Mine' approach for asbestos only is 19 over."</p> <p>20 That's what it says, right?</p> <p>21 A. Right, correct. Yes.</p> <p>22 Q. "Asbestos only," right?</p> <p>23 A. Correct, yes.</p> <p>24 Q. And then when we scroll back to 25 4 b., and it talks about the fact that there's a</p>	<p style="text-align: right;">Page 145</p> <p>1 positive hit with this new method.</p> <p>2 BY MR. EWALD:</p> <p>3 Q. I want to talk about the other 4 document that you mentioned --</p> <p>5 A. Sure.</p> <p>6 Q. -- a moment ago. And that one is 7 the January 1975 one. If it helps you, I 8 believe the doc number that you guys put, 9 probably by tab or index, is 128.</p> <p>10 MS. PARFITT: One, two, eight, okay.</p> <p>11 One, two, eight. Just give us one moment, John. 12 We'll grab it.</p> <p>13 MR. EWALD: Sure.</p> <p>14 MS. PARFITT: And, John, again, it's 15 review of the present status of talc, January 16 1975.</p> <p>17 MR. EWALD: Yes.</p> <p>18 MS. PARFITT: Okay, very good. Thank 19 you.</p> <p>20 BY MR. EWALD:</p> <p>21 Q. Okay, for the record, we're 22 marking as Exhibit 9 a January 1975 document 23 titled "Review On The Present Status Of Talc 24 Safety Substantiation Activities And Update Of 25 Contingency Plans," Bates Number of</p>

<p>1 J&J000026987.</p> <p>2 EXHIBIT NO. 9: "Review On The Present</p> <p>3 Status Of Talc Safety Substantiation</p> <p>4 Activities And Update Of Contingency</p> <p>5 Plans," January 1975, Bates Number of</p> <p>6 J&J000026987.</p> <p>7 BY MR. EWALD:</p> <p>8 Q. And, Doctor, this is a document</p> <p>9 that you reviewed and cite and quote in your</p> <p>10 report, correct?</p> <p>11 A. Yes.</p> <p>12 Q. And if we turn to page 2, you'll</p> <p>13 see there is a historical review on page 7. I'd</p> <p>14 like to turn there. Let me know when you're</p> <p>15 there.</p> <p>16 A. Let me see. It's page 7 in the</p> <p>17 document. Yeah. Okay.</p> <p>18 Q. So this 1975 document starts with</p> <p>19 on the "Historical Review" bullet point that:</p> <p>20 "Researchers and consumerists</p> <p>21 first raised questions on talc several</p> <p>22 years ago. The most vocal of these</p> <p>23 was the Tenovus Group in England and</p> <p>24 the Mount Sinai Hospital Group in New</p> <p>25 York City."</p>	<p>Page 146</p> <p>1 and the identification of the issues in this</p> <p>2 paragraph. Assuming that's correct, is that</p> <p>3 something that Johnson & Johnson should have</p> <p>4 reported to consumers, otherwise, it would be</p> <p>5 misleading and deceptive?</p> <p>6 MS. PARFITT: Objection. Misstate the</p> <p>7 evidence.</p> <p>8 THE WITNESS: You know, it's hard for</p> <p>9 me to comment on a specific event, especially</p> <p>10 because I'm just not familiar with this report</p> <p>11 from Mount Sinai, and then the inspection of the</p> <p>12 individuals, and it's mentioned here, Medical</p> <p>13 Research Council in England. So it would be</p> <p>14 hard for me to form an opinion of that specific</p> <p>15 event. But just to situate this historically,</p> <p>16 then you have a whole lot of actions post-1975</p> <p>17 that seem to be taking the health concerns</p> <p>18 pretty darn seriously, as evidenced by all the</p> <p>19 cornstarch discussion that we were having</p> <p>20 earlier.</p> <p>21 So those are all documents and market</p> <p>22 research testing that's coming way after 1975.</p> <p>23 And I just -- if this is an open and shut, kind</p> <p>24 of, issue in 1975, then why are they spending so</p> <p>25 much time and money thinking about a replacement</p>
<p>1 It goes on to say:</p> <p>2 "One of their first publications</p> <p>3 asserted that they found talc and</p> <p>4 ovarian cancer tissue. Subsequent to</p> <p>5 this publication their laboratory was</p> <p>6 examined by Dr. Pooley, consultant of</p> <p>7 Johnson & Johnson, and Dr. Geoffrey</p> <p>8 Lord. Through the Medical Research</p> <p>9 Council in England they were</p> <p>10 criticized for their techniques. That</p> <p>11 is, the individuals who examined their</p> <p>12 laboratory found very high backgrounds</p> <p>13 of talc in the processing solutions</p> <p>14 and paraffin baths which made the</p> <p>15 occurrence of any talc on histological</p> <p>16 slides highly suspect."</p> <p>17 Are you familiar at all with the</p> <p>18 Tenovus Group findings that are referred to</p> <p>19 here?</p> <p>20 A. Not really, no.</p> <p>21 Q. Right. If, indeed -- well, let</p> <p>22 me put it this way. I want you to assume that</p> <p>23 Johnson & Johnson scientific assessment of</p> <p>24 Tenovus Group's first publication is correct,</p> <p>25 that they were criticized for their techniques</p>	<p>Page 147</p> <p>1 product afterwards?</p> <p>2 BY MR. EWALD:</p> <p>3 Q. Do you know who Dr. Selikoff is?</p> <p>4 A. No, I don't.</p> <p>5 Q. By the way, did you read this</p> <p>6 part of the document that you cited and quoted</p> <p>7 in your report?</p> <p>8 A. I did, yes, I believe so, yeah.</p> <p>9 Q. All right. So this goes on in</p> <p>10 the second bullet on page 7, carrying over to</p> <p>11 page 8:</p> <p>12 "Dr. Selikoff, Director of</p> <p>13 Environmental Sciences Laboratory,</p> <p>14 Mount Sinai School of Medicine has</p> <p>15 been a vocal leader in environmental</p> <p>16 pollution and is presently stationed</p> <p>17 at Mount Sinai Hospital in New York</p> <p>18 City. He has with him Dr. Langer, who</p> <p>19 is a mineralogist. They concentrated</p> <p>20 on the asbestos issue and contend that</p> <p>21 the presence, even a single fiber</p> <p>22 could cause cancer. In the press they</p> <p>23 have established considerable</p> <p>24 confusion by linking talc with</p> <p>25 asbestos using terminology stemming</p>

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<p style="text-align: right;">Page 150</p> <p>1 from geological origin. They have 2 been responsible for erroneous 3 statements to the New York Times 4 regarding the content of asbestos in 5 talcum powders. These statements were 6 later retracted in subsequent New York 7 Times publications."</p> <p>8 Did I read that correctly?</p> <p>9 A. You did read it correctly, yes.</p> <p>10 Q. So here we have an internal 11 document, Johnson & Johnson, 1975. It's Johnson 12 & Johnson saying that in the press, it is people 13 like New York Times and Dr. Langer who are 14 establishing considerable confusion by linking 15 talc with asbestos, correct?</p> <p>16 MS. PARFITT: Objection, form.</p> <p>17 THE WITNESS: That's what it appears 18 to say, yes.</p> <p>19 BY MR. EWALD:</p> <p>20 Q. And you don't have the expertise, 21 one way or another, to know whether Johnson & 22 Johnson is right in that the conclusions of 23 Dr. Langer and Dr. Selikoff are erroneous nor 24 retracted, right?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 152</p> <p>1 they talk about some of the potential problems 2 which we talked about in other documents seem to 3 be economic problems. Here, they're mentioning 4 some other potential medical problems. Those 5 didn't bear out -- I don't see those in any 6 other documents post that point.</p> <p>7 But even in the context of all of 8 these health issues, they're talking about, 9 okay, well, cornstarch seems to be a really good 10 alternative solution. We think it's the number 11 one answer. And I think that's very important 12 to understanding at least the marketing strategy 13 and what -- what I'm speaking to.</p> <p>14 Q. And I appreciate your point on 15 that. Do you think that it is appropriate, 16 scientifically, to take a look at the talc 17 strategy conclusion on page 18 to 19 without 18 understanding or having the ability to 19 understand the historical context that is 20 communicated in the preceding 18 pages.</p> <p>21 MS. PARFITT: Objection, form.</p> <p>22 THE WITNESS: Are you saying, is it -- 23 is it -- I don't -- is the question about 24 whether it's scientifically valid for J&J or...</p> <p>25 BY MR. EWALD:</p>
<p style="text-align: right;">Page 151</p> <p>1 MS. PARFITT: Objection, form.</p> <p>2 THE WITNESS: I'm not able to evaluate 3 that.</p> <p>4 BY MR. EWALD:</p> <p>5 Q. It goes on to say on page 9: 6 "Johnson & Johnson has always 7 taken a position of cooperation." 8 And the top question, Food and Drug 9 Administration notes. You know anything about 10 Dr. Lewin's testing, know anything about that?</p> <p>11 A. I know the name. But no, not 12 really it. Mr. Ewald, I just -- I do want to -- 13 because that's not the only aspect of the 14 document that I discussed. And I think there is 15 a really informative part of the document on the 16 last page, on page 18 where they talk about 17 strategy, which is most germane to what I 18 reviewed, certainly where I focused my efforts 19 and my reading of that last page is, Look, our 20 best bet is to go with cornstarch. The first 21 sentence is: 22 "Cornstarch appears to be the 23 number one answer to any alternates to 24 talcum powder. We presently have..." 25 Something that's ready to go. Then</p>	<p style="text-align: right;">Page 153</p> <p>1 Q. For you. Reach conclusions that 2 you do about what this paragraph means about 3 cornstarch alternatives without understanding 4 the context in which it is written?</p> <p>5 MS. PARFITT: Objection, misstates, 6 what is earlier testimony.</p> <p>7 THE WITNESS: Again, just to clarify, 8 my position is, you know, if I were to, at a 9 high level, summarize how I interpret this 10 document is there are a lot of concerns about 11 the safety of talc. We have some studies that 12 are out -- currently underway. Some of those 13 seem to be sponsored by Johnson & Johnson. All 14 of these, as I interpret them, are, again, 15 concerns about asbestos and lung cancer.</p> <p>16 And so when -- again, I'm not -- this 17 is outside my expertise, but when I look at 18 something like the Rubino studies that's talking 19 about lung cancer, not ovarian cancer or 20 anything like that, and then they're saying, 21 Okay, well, there are all of these problems and 22 one obvious solution here is to go with 23 cornstarch. And that began -- that's one 24 document in a long line of documents which 25 reinforces this idea that I think culminates in</p>

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<p>1 some documents later on where they say things 2 like, it's an inevitability that corn, excuse 3 me, talc is going to be removed from the market. 4 How should we figure out how to replace it, et 5 cetera, et cetera. So -- yeah.</p> <p>6 BY MR. EWALD:</p> <p>7 Q. So you mean --</p> <p>8 MS. PARFITT: Please. Are you done?</p> <p>9 Are you done?</p> <p>10 THE WITNESS: I'm done, yeah. Yeah, 11 go ahead.</p> <p>12 BY MR. EWALD:</p> <p>13 Q. You made reference to some of the 14 studies being funded by J&J is -- are you 15 offering an opinion that it was bad corporate 16 practice to fund studies going to whether or not 17 the products that are being used are safe?</p> <p>18 MS. PARFITT: Objection, misstates his 19 testimony.</p> <p>20 THE WITNESS: My understanding, again, 21 this is outside my area of expertise. My 22 understanding is that that is a common practice 23 for companies to sponsor medical research. But 24 my problem with it is then what they tell the 25 public, because they don't communicate that to</p>	<p>1 THE WITNESS: You know, I would have 2 to -- I would have to look at it. But, I mean, 3 I guess if you want to talk about specifics -- 4 I'm not aware of that. Again, I can't comment 5 on that right now because you're just telling me 6 about it. But I haven't verified it in any way 7 for myself or looked into it.</p> <p>8 BY MR. EWALD:</p> <p>9 Q. I guess -- I understand that.</p> <p>10 I'm asking whether, if what I'm saying is true, 11 does that matter to you?</p> <p>12 MS. PARFITT: Object, does it matter 13 to him.</p> <p>14 THE WITNESS: Again, I thought -- I'll 15 just kind of restate, hopefully, to clarify. 16 That funding for research comes from somewhere, 17 to me, isn't necessarily problematic when we're 18 talking about the consumer-related issues, is, 19 what do you then communicate to the public. In 20 this case, Johnson & Johnson, we could look at a 21 1985 press release document where they're 22 coaching -- what seems to be to coach PR people 23 within the organization about how to talk about 24 Johnson's Baby Powder. And they use words like 25 "independent scientists." So that part is</p>
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<p>1 the public at all. They say, you know, 2 independent scientists have concluded that this 3 is safe. And, no, it's not true that these 4 scientists were working completely 5 independently. And I think yet another instance 6 in which they're misleading the public, 7 misleading consumers, and not allowing people to 8 really make up their own mind about the issue.</p> <p>9 BY MR. EWALD:</p> <p>10 Q. What about, you talked about 11 Health Canada. Do you know whether any of the 12 studies that were relied on by Health Canada 13 were funded by some of the plaintiff's law firms 14 that are on this very deposition.</p> <p>15 MS. PARFITT: Object, form.</p> <p>16 THE WITNESS: No, I don't know about 17 any of the specifics of those.</p> <p>18 BY MR. EWALD:</p> <p>19 Q. Does that matter to you?</p> <p>20 A. I'm sorry?</p> <p>21 Q. Does it matter to you whether or 22 not the -- some of the studies relied on by 23 Health Canada are funded by plaintiff law firms?</p> <p>24 MS. PARFITT: Objection, misstates the 25 evidence.</p>	<p>1 misleading, and that's really what I'm talking 2 about.</p> <p>3 BY MR. EWALD:</p> <p>4 Q. So if a scientist completes a 5 study and that study is funded by a party 6 interested in the result, you wouldn't call that 7 person an independent scientist?</p> <p>8 MS. PARFITT: Objection.</p> <p>9 THE WITNESS: I wouldn't say that 10 those scientists have worked independently.</p> <p>11 BY MR. EWALD:</p> <p>12 Q. Okay. Let's look at another 13 document around the same time. This was one 14 that I don't think I saw in your report. I 15 could be wrong, but was in the additional 16 documents reviewed. It is 0419 in your indexing 17 system. Let me know when you've got it.</p> <p>18 MS. PARFITT: John, again, if you give 19 us just a moment.</p> <p>20 MR. EWALD: Sure.</p> <p>21 MS. PARFITT: And John, again. 0419. 22 That's just four letters, right?</p> <p>23 MR. EWALD: 0419 is the four numbers, 24 yeah.</p> <p>25 MS. PARFITT: John, I'm looking at his</p>

<p style="text-align: right;">Page 158</p> <p>1 references and Dropbox, and I'm not seeing 0419, 2 so may can either come back --</p> <p>3 MR. EWALD: If it makes any difference 4 this was from the production you guys made a day 5 or two ago.</p> <p>6 MS. PARFITT: The only addition we 7 made the other day were websites.</p> <p>8 MR. EWALD: It's also in the 9 additional -- maybe it's in the additional 10 document review folder. I think that's where I 11 remember seeing it.</p> <p>12 MS. PARFITT: So I may have to have 13 you put that in the chat because I don't see a 14 copy of that. Okay, I'm going in -- and I don't 15 have my computer to go into the Dropbox.</p> <p>16 MR. EWALD: No worries.</p> <p>17 MS. PARFITT: John, if you can give me 18 a date of the report, that may be helpful, too.</p> <p>19 MR. EWALD: Yeah., It's just, if it 20 helps at all, I found it looking right now in 21 the folder that was request numbers, 5 to 19, 22 materials reviewed, additional materials 23 considered, 0419 pops up there, but the date is 24 March 3, 1975.</p> <p>25 MS. PARFITT: Again, John, I hate to</p>	<p style="text-align: right;">Page 160</p> <p>1 Q. Yeah, yeah. Take your time. I 2 just want to make sure, on the same page.</p> <p>3 A. Okay. I've completed the second 4 paragraph. Okay. I've completed that 5 paragraph.</p> <p>6 Right. And I think this is at least, 7 maybe, one of the things in the previous 8 document where, you know, I was -- led me to 9 believe that some of the studies were paid for 10 by J&J. Okay, I finished reading it. Yeah.</p> <p>11 Q. This wasn't the additional 12 documents considered folder, at least when I 13 looked at it.</p> <p>14 And is it fair to say that the 15 document in that folder would not have been 16 included in your report?</p> <p>17 A. I think that's fair to say. I 18 had assistance putting those folders together. 19 I didn't assemble those folders myself. But, 20 yeah, I think that's probably fair.</p> <p>21 Q. By the way, on that front, 22 besides assistance -- all the assistance at 23 University of Toronto?</p> <p>24 A. No, no.</p> <p>25 Q. Assistance with the law firm?</p>
<p style="text-align: right;">Page 159</p> <p>1 make you do that, but I can't get into my 2 computer right now since you're using it, or I'd 3 go through the Dropbox. I may have to have you 4 put that in the chat.</p> <p>5 MR. EWALD: That's fine. What I'm 6 doing right now, it's just a two pager.</p> <p>7 MS. PARFITT: If you'd be kind enough, 8 when you put it in, unless he recognizes it 9 right away, give him a couple minutes to refresh 10 his memory on it, since I don't have anything to 11 put in front of him.</p> <p>12 MR. EWALD: Sure.</p> <p>13 MS. PARFITT: Thank you.</p> <p>14 THE WITNESS: I think just to make 15 it -- I'll open it, but I'm just going to 16 minimize that so I can just look it, because I 17 think it's going to be too much to try to go 18 back and forth. So I'll just look off of the 19 screen and then I'll let you know if I've got a 20 break from that.</p> <p>21 BY MR. EWALD:</p> <p>22 Q. So, sorry. Are you reviewing it 23 now?</p> <p>24 A. I'm sorry. Yeah, so I just 25 finished reading the first paragraph.</p>	<p style="text-align: right;">Page 161</p> <p>1 A. Correct, yes. Yes.</p> <p>2 Q. Do you know, or do you have 3 any -- let me say it this way.</p> <p>4 How does this document, if at all, 5 inform your opinions in this case?</p> <p>6 A. Again, I don't remember this 7 being a part of my opinions. In reading it, 8 now, to be quite candid, I do not interpret it 9 favorably to Johnson & Johnson.</p> <p>10 Q. Do you think I'm only going to 11 put documents in front of you that are favorable 12 to Johnson & Johnson?</p> <p>13 A. No, no. I mean, but you're 14 just -- well, I don't think that's an 15 unreasonable assumption, actually. But, you 16 know, my reading of this is, you know, what 17 we -- if you want to talk about specifics, I'm 18 happy to. But it is, you know, essentially the 19 first part is, you know, we've only responded 20 and looked for data when people have found 21 something bad about our product. And part of 22 the reason why we didn't do that is because we 23 might find something -- part of the reason why 24 we weren't more proactive is that we didn't -- 25 might find something bad ourselves. And, man,</p>

<p style="text-align: right;">Page 162</p> <p>1 that would be even more embarrassing than 2 somebody else finding something bad. 3 And then, there's some discussion 4 about, Well, maybe we should take an alternative 5 strategy, and if we're able to sponsor some 6 research proactively that finds negative 7 effects, that would be good, because now we're 8 not just responding in kind. But to me, as a 9 scientist and a researcher, this reads a little 10 bit like, We've reached our conclusion, and how 11 best to strategize on looking for evidence 12 that's going to best support that conclusion 13 with the general public, is how I interpret that 14 document.</p> <p>15 Q. Okay. And do you know, for 16 example, whether Johnson & Johnson funded the 17 NIOSH study of talc mine workers, as referred to 18 here and at the end?</p> <p>19 A. I don't know that. No, no.</p> <p>20 Q. Do you know whether or not the 21 study, you see it's reference there, was 22 ultimately published in the literature for 23 anyone to review?</p> <p>24 A. Again, I don't know. That might 25 have been one of the studies that I looked at,</p>	<p style="text-align: right;">Page 164</p> <p>1 reminder. 2 MS. PARFITT: Oh, John. Oh, you have 3 it up?</p> <p>4 THE WITNESS: Yeah. 5 MS. PARFITT: Okay. 6 THE WITNESS: I'm comfortable. Yeah, 7 yeah, yeah. I'm comfortable. 8 BY MR. EWALD: 9 Q. So when we were talking about 10 this document, we were reading from its response 11 to the citizen petition about talc and asbestos. 12 And I believe we left off saying: 13 "In addition..." 14 This is on page 2 of the letter, 4 the 15 PDF: 16 "...FDA surveillance activities 17 that were conducted in the latter 18 portion of the 1970s showed that the 19 quality -- 20 Actually, I took a little bit -- 21 A. Mr. Ewald, just for context, 22 because I'm looking at it for the first time. 23 Can you just explain to me the origin of this 24 document, who's producing it, and who's the 25 intended audience?</p>
<p style="text-align: right;">Page 163</p> <p>1 in looking at many studies, but I don't recall. 2 Q. Do you recall reviewing the final 3 published study of Professor Rubino by the 4 Italian talc millers and miners? 5 A. Again, I -- not well, and 6 certainly that I couldn't speak to its merits or 7 dis-merits. But I do, I think, remember reading 8 that study, yes. 9 Q. All right. Let's go back to FDA 10 1986. We marked it as Exhibit 7 before the 11 lunch break. 12 MS. PARFITT: If you can give me a 13 minute. I put it in the exit screen and let me 14 see if I can get it. 15 THE REPORTER: Sorry, counsel, did you 16 want to mark that previous document? 17 MR. EWALD: I meant to say Exhibit 10. 18 If I didn't, that document, March 3, 1975. 19 EXHIBIT NO. 10: Johnson & Johnson 20 document, Management Authorization for 21 Additional Talc Safety Studies, March 22 3, 1975. 23 THE REPORTER: Okay, perfect. Thank 24 you. 25 MR. EWALD: Thank you for the</p>	<p style="text-align: right;">Page 165</p> <p>1 Q. Sure. Well, the first page is a 2 certificate that has an official red ribbon from 3 the Department of Health and Human Services. 4 And this affidavit talking about that this is 5 from the custody of official records of the US 6 FDA. 7 A. Yes. 8 Q. Certified copy signed from 9 December 2015. And this is a letter response 10 July 1986 to the individual who submitted the 11 November 8, 1983 petition requesting that 12 cosmetic talc be labeled within asbestos warning 13 statement. Do you see that? 14 A. Correct, yes. Okay. 15 Q. And, actually, I was on the wrong 16 page when we left off. We were talking about 17 this paragraph from the FDA about the early 18 1970s, and the FDA stating that: 19 "...the analytical procedures for 20 determining asbestos in talc were not 21 fully developed, and most of the 22 analytical work was conducted without 23 scientific agreement as to which 24 methods were well-suited for the 25 identification of asbestos minerals</p>

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<p style="text-align: right;">Page 166</p> <p>1 and talc. Consequently, FDA 2 considered all analytical results to 3 be a questionable reliability." 4 Did I read that correctly? 5 A. You did read it correctly. 6 Q. And do you have any basis to 7 disagree with the FDA statement on that. 8 MS. PARFITT: Objection, form. 9 THE WITNESS: I don't have any basis 10 to offer an opinion one way or the other. 11 BY MR. EWALD: 12 Q. And when you are -- sorry. When 13 you are reviewing documents from the early 1970s 14 that talk about testing results of asbestos, is 15 it important to you, as a scientist, to know 16 whether or not the test methods that are being 17 used are reliable? 18 A. I mean, if you're asking me, 19 generally, of course. If I'm evaluating 20 research in my own area where I have expertise, 21 you know, I serve as a reviewer almost weekly, 22 you know, at all of our top journals, some at 23 general science journals. Yeah, I mean, of 24 course, I'm attending very carefully to 25 methodology, but I also know what I don't know,</p>	<p style="text-align: right;">Page 168</p> <p>1 early 1970s did contain asbestos form mineral. 2 That's what it says, right? 3 A. Correct? Yes. 4 Q. Does it say cosmetic talc 5 produced by Johnson & Johnson? 6 A. No, it doesn't. 7 Q. And if I'm remembering correctly, 8 you stated earlier that you're not offering an 9 opinion whether or not Johnson & Johnson talc 10 products have ever had asbestos, correct? 11 A. Correct, correct. Yes. And 12 again, I'm not citing this document. This isn't 13 a document that I relied on, and so I'm not 14 making broad conclusions. But if we're pointing 15 to what's inside the scope of my expertise 16 versus not, that statement is much more in the 17 scope of my expertise in evaluating the 18 marketing materials than would be 19 classifications of different kinds of fibers. 20 Q. It goes on in the second page of 21 the letter to state: 22 "Consequently..." 23 The FDA says: 24 "...we find that there is no 25 basis at this time for the agency to</p>
<p style="text-align: right;">Page 167</p> <p>1 and I'm not able to evaluate methodology in this 2 case. 3 If you wouldn't mind, I don't want to 4 take us off course. But for my purposes, when I 5 look at a document like this and I read a 6 sentence that's in the previous paragraph that 7 says: 8 "The agency is also aware that 9 some cosmetic talc produced in the 10 1960s and early 1970s did contain 11 asbestos minerals." 12 And then I read Johnson & Johnson 13 marketing materials that say no asbestos ever, 14 right? That's the kind of incongruity that is 15 really setting off alarm bells for me. So I'm 16 not able to evaluate the science of detection, 17 but I can say, well, look, the FDA is saying it 18 used to contain asbestos, at least. And 19 Johnson, and Johnson is telling consumers: 20 Never contained asbestos. And that is the kind 21 of disconnect that I'm really concerned with. 22 Q. Well, so now we're -- it doesn't 23 say -- well, specifically what it says on page 1 24 of the letter is the agency is also aware that 25 some cosmetic talc produced in the 1960s and</p>	<p style="text-align: right;">Page 169</p> <p>1 conclude that there is a health hazard 2 attributable to asbestos in cosmetic 3 talc. Without evidence of such 4 hazard, the agency concludes that 5 there is no need to require a warning 6 label on cosmetic talc." 7 Did I read that correctly? 8 A. Yes, you did read it correctly. 9 Q. I know you didn't see this before 10 issuing your report, but does that conclusion by 11 the FDA have any impact on your opinions? 12 A. No. But also, doesn't the same 13 logic apply as -- so we just said before, it 14 doesn't say Johnson & Johnson. It also doesn't 15 say Johnson & Johnson here, right? So in saying 16 that there used to be talc in it -- or used to 17 be asbestos in it, and it's not singling out 18 Johnson & Johnson. It's also, in this sentence, 19 not saying, you know, Johnson & Johnson in 20 particular is free from this. 21 Q. But do you understand that this 22 was a request for the FDA to change -- to 23 require certain hazardous label warning, and 24 that they are rejecting that for all cosmetic 25 talc?</p>

<p style="text-align: right;">Page 170</p> <p>1 MS. PARFITT: Objection, form.</p> <p>2 THE WITNESS: Again, I mean, I can</p> <p>3 start to form an impression of this document</p> <p>4 based on reading it. It's harder for me to put</p> <p>5 it into a larger context. But --</p> <p>6 BY MR. EWALD:</p> <p>7 Q. Now, another part of the</p> <p>8 document, if we go a little bit further, this is</p> <p>9 a June 6, 1985 memorandum, Department of Health</p> <p>10 and Human Services. "Asbestos in Talc" from</p> <p>11 Quantitative Risk Assessment Committee, Gary</p> <p>12 Flamm, Office of Toxicological Sciences. And</p> <p>13 there's some discussion of asbestos and lung</p> <p>14 cancer.</p> <p>15 I want to ask you about ovarian talc</p> <p>16 study:</p> <p>17 "For completeness, a discussion</p> <p>18 is presented on a human</p> <p>19 epidemiological study purporting to</p> <p>20 show an association between talc use,</p> <p>21 (talcum powder used for genital</p> <p>22 dusting on the perineum or on sanitary</p> <p>23 napkins) and ovarian cancer.</p> <p>24 The Cramer et al. study [2],</p> <p>25 which purported to show a</p>	<p style="text-align: right;">Page 172</p> <p>1 one moment in time. I would put this document</p> <p>2 in context with my reading right, that was like</p> <p>3 1986. But then you also have 1986 documents</p> <p>4 that are right around the same time which are</p> <p>5 advocating for the replacement of talc powder</p> <p>6 with cornstarch when they're doing market</p> <p>7 analyses, when they're evaluating safety</p> <p>8 hazards, et cetera. And so, I mean, my take</p> <p>9 would be, if it's such a non-issue, why are they</p> <p>10 continuing to speculate on it and consider</p> <p>11 alternatives?</p> <p>12 BY MR. EWALD:</p> <p>13 Q. You cite in your report, the</p> <p>14 FDA -- let's go there. Hold on. So, in page</p> <p>15 19, including paragraph 75, you reference a</p> <p>16 citizens petitions to the FDA from 1994. And</p> <p>17 then on page 21, starting on paragraph 82, you</p> <p>18 also mention a second citizens petition,</p> <p>19 relating to talc 2008, right?</p> <p>20 A. Correct, yes.</p> <p>21 Q. And I saw on your reference list</p> <p>22 that you're aware of the 2014 decision denying</p> <p>23 the citizen petition request, correct?</p> <p>24 A. I am aware of that, yes.</p> <p>25 Q. Is there any reason why you</p>
<p style="text-align: right;">Page 171</p> <p>1 significantly increased relative risk</p> <p>2 for ovarian cancer associated with</p> <p>3 talc use, 1) appears to have been</p> <p>4 misinterpreted statistically, 2) was</p> <p>5 uncorrected for several likely biasing</p> <p>6 factors and 3) appears to have been</p> <p>7 strongly contradicted by another study</p> <p>8 showing a reduced relative risk as</p> <p>9 significant in the negative direction</p> <p>10 as the Cramer study was in the</p> <p>11 positive direction."</p> <p>12 Did I read that correctly?</p> <p>13 A. You did read it correctly, yes.</p> <p>14 Q. You've seen this before?</p> <p>15 A. No, I've never seen this.</p> <p>16 Q. Is it -- if the FDA is correct,</p> <p>17 that the Cramer 1982 study has the three</p> <p>18 deficiencies that I just identified, is it still</p> <p>19 your position that when Johnson & Johnson</p> <p>20 becomes aware of a publicly available Cramer</p> <p>21 study in 1982, it should have communicated that</p> <p>22 to consumers?</p> <p>23 MS. PARFITT: Objection to form.</p> <p>24 THE WITNESS: I mean, again, the basis</p> <p>25 of my opinion isn't around one single study or</p>	<p style="text-align: right;">Page 173</p> <p>1 didn't include that in your report?</p> <p>2 A. No. I mean, it wasn't -- you</p> <p>3 know, I'm not -- my report isn't about the FDA.</p> <p>4 My report is about Johnson & Johnson and how</p> <p>5 they talk to consumers.</p> <p>6 Q. Okay. Well, a citizen submits --</p> <p>7 well, actually, it says, this is a cancer</p> <p>8 prevention coalition submits a petition to the</p> <p>9 FDA saying, requiring a warning label relating</p> <p>10 to talc, ovarian cancer, and that is rejected by</p> <p>11 the FDA. And you're saying that that has no</p> <p>12 relevance to your opinions?</p> <p>13 MS. PARFITT: Objection, misstates</p> <p>14 stasis testimony.</p> <p>15 THE WITNESS: Well, I mean, again, my</p> <p>16 understanding of the timeline here is that</p> <p>17 there's first a petition in 1994 and then -- and</p> <p>18 then another petition in 2008. And so there's</p> <p>19 no response to the '94 or 2008 until 2014. And</p> <p>20 so, you know, that's 14 years, you know, by my</p> <p>21 count, where there's no response at all, right,</p> <p>22 from the FDA.</p> <p>23 BY MR. EWALD:</p> <p>24 Q. Understood. But does it have no</p> <p>25 relevance to you -- does it not have any impact</p>

<p style="text-align: right;">Page 174</p> <p>1 on your opinion that the citizens petitions that 2 you cite and quote from in your report were 3 ultimately denied by the FDA? 4 MS. PARFITT: Objection, form. 5 THE WITNESS: You know, again, I'm 6 mostly interested in what Johnson & Johnson is 7 telling their consumers. And so there's a 8 period of time, like everything before 2014, 9 there's a lot of marketing actions that are 10 happening. And so if you want to say, okay, 11 well, that was an important period in which the 12 FDA has a decision about it, there's still this 13 huge stretch of time where there's citizen 14 positions [sic], there's more and more studies 15 that are coming out that are finding an 16 association. 17 There are these internal discussions 18 about translocation and ovarian cancer. There 19 are these emails that are exchanged between 20 people at Johnson & Johnson saying, I don't feel 21 comfortable selling this or having it in the 22 baby aisle, or, we never told women to put it on 23 their perineal area. And so all of that is 24 happening prior to 2014. So in terms of, is 25 there evidence that J&J didn't get consumers a</p>	<p style="text-align: right;">Page 176</p> <p>1 paragraphs, on page 22, is that right? 2 A. Yes, that's correct. Yeah. 3 Q. Okay. And so how do you 4 interpret what Mr. True is saying in those two 5 emails that you quote at length in your report? 6 A. Well, I think there's a few 7 things that are going on here that are really 8 important. One, you know, you have somebody 9 within the company that seems to be taking these 10 health concerns very seriously. You know: 11 "The reality that talc is unsafe 12 for use on or around babies is 13 disturbing. You know: 14 "I don't think we can...keep it 15 in the baby aisle." 16 And so there's raising those concerns 17 internally, which is not inconsistent with other 18 periods of time. But then there's, there's also 19 some kind of severe institutional amnesia in the 20 responses, right, about, for instance, why 21 cornstarch was developed. 22 And like in Fred Koberna's reply on 23 April 18th, okay, well, the reason why we 24 launched cornstarch is because women prefer the 25 feel of it. Well, that's not true at all,</p>
<p style="text-align: right;">Page 175</p> <p>1 fair shake? I think there's lots of evidence of 2 that. 3 BY MR. EWALD: 4 Q. Well, so are you suggesting that 5 if the science -- if the science -- that's 6 wrong. 7 Are you suggesting that if the side of 8 the science that Johnson & Johnson has 9 steadfastly stated it believes is accurate, that 10 its talc does not cause cancer, if that science 11 is ultimately proven correct, your opinion is 12 still, they've engaged in misleading and 13 deceptive conduct because they didn't express 14 the alternative viewpoint in previous years? 15 MS. PARFITT: Objection, form. 16 THE WITNESS: Yes. Yeah, yeah, yeah. 17 Short answer, yes. 18 BY MR. EWALD: 19 Q. Right. Now, you mentioned the 20 baby aisle thing. 21 And specifically, are you talking 22 about the Todd True emails? 23 A. Yeah. 24 Q. Okay. And so we're all on the 25 same page. It's referred to 84 through 86</p>	<p style="text-align: right;">Page 177</p> <p>1 because we can look back to all of the documents 2 that we were talking about in the early eighties 3 where it was about addressing these health 4 concerns. There was nothing about women might 5 like the feel better. That's not in any of the 6 testing. 7 And so not only are there concerns 8 about the product, but then there's kind of this 9 institutional amnesia about why alternatives 10 were developed, what potential health risks 11 might be. Yeah, I'll stop there. 12 Q. Okay. And so when you say about 13 Todd True -- first of all, Todd True, you have 14 it there in parentheses is the global creative 15 director at J&J? 16 A. That's my understanding, yes. 17 Q. Fair to say that at least you 18 wouldn't expect the global creative director to 19 have any scientific medical background, correct? 20 MS. PARFITT: Objection, form. 21 THE WITNESS: I would expect that 22 person to have a high touch with consumers. 23 BY MR. EWALD: 24 Q. Okay. And when you talked about 25 these health concerns that are raised by</p>

<p style="text-align: right;">Page 178</p> <p>1 Mr. True, what health concerns is he referring 2 to?</p> <p>3 A. I can only assume that it is the 4 same health concerns that we've been talking 5 about.</p> <p>6 Q. Having what?</p> <p>7 A. I guess, relating to ovarian 8 cancer or cancer.</p> <p>9 Q. Right. And in fact, in your -- 10 we'll mark it as Exhibit 11, your three page 11 intro -- three page set of notes that 12 Ms. Parfitt helpfully sent over, you have 13 different sections, you have inhalation, you 14 have inhalation and cancer, asbestos. And you 15 have a section where you have some excerpts 16 under ovarian cancer, correct?</p> <p>17 EXHIBIT NO. 11: Dr. Newman's notes. 18 THE WITNESS: Correct, yes. 19 BY MR. EWALD: 20 Q. And you include the Todd True 21 excerpts under the ovarian cancer section, 22 right? 23 A. Yeah. And to be clear, this is 24 just my categorization. 25 Q. Right. And you said you're</p>	<p style="text-align: right;">Page 180</p> <p>1 Q. This maybe be referring to a risk 2 of aspiration with babies that's warned on the 3 label?</p> <p>4 MS. PARFITT: Objection, misstates the 5 evidence.</p> <p>6 THE WITNESS: Yeah, I don't -- you 7 know, I don't see evidence of that. I mean, 8 also the last sentence is, given the number of 9 other ingredient issues we were facing, just 10 seems like an easy fix and win. So this isn't 11 talking about inhalation risk, this is talking 12 about what's in the product, what's in the 13 ingredients, right?</p> <p>14 BY MR. EWALD: 15 Q. Well, you tell me. 16 A. So the next -- okay: 17 "I don't mind selling talc, I 18 just don't think we can continue to 19 call it Baby Powder and keep it in the 20 baby aisle. Have we done any research 21 to determine the potential negative 22 impact to our brand or best for baby 23 strategy by maintaining this 24 ingredient?" 25 So it isn't by this aeration method or</p>
<p style="text-align: right;">Page 179</p> <p>1 making an assumption that he's referring to 2 ovarian cancer, right?</p> <p>3 A. Correct. My understanding from 4 all of the materials that I reviewed is that at 5 that point in time, in the early 2000s, the main 6 health risk that we're talking about with talcum 7 powder is associated with cancer, ovarian 8 cancer.</p> <p>9 Q. So if that's the case, and you 10 said that you expect Mr. True to have a high 11 touch with customers, why would he be saying we 12 should move this cancer causing powder from the 13 baby aisle to the adult aisle?</p> <p>14 A. I find that very -- I mean, I 15 find it very disturbing.</p> <p>16 Q. So now you're disturbed by 17 Mr. True's email that you're saying that he is 18 suggesting that we need to be -- make sure we're 19 killing adults and not babies?</p> <p>20 A. I don't know how else to 21 interpret that sentence.</p> <p>22 Q. Well, remember that when we 23 talked about aspiration and that risk to infants 24 earlier?</p> <p>25 A. Sure, yeah.</p>	<p style="text-align: right;">Page 181</p> <p>1 type of cap or -- they're talking about an 2 ingredient that's in there. So I would assume 3 that to be talc or talc that contains asbestos.</p> <p>4 Q. Doctor, can you state to a 5 reasonable degree, degree of professional 6 certainty that the health risk that Todd True is 7 talking about in his emails that you referred to 8 and quote, in paragraphs 84 and 85, is ovarian 9 cancer?</p> <p>10 A. No. I mean, I can't -- very, 11 very little you could say for certain. I think 12 it is more probable than not, in my reading, 13 that he is talking about an ingredient issue 14 with the product since he uses the word 15 ingredient a number of times and not some other 16 health risk. In Koberna's reply, he 17 spontaneously -- they're both talking about 18 cornstarch, right? I mean, again, I don't know 19 how this -- it's difficult for me to substitute 20 a theory in which they're talking about 21 inhalation because it just doesn't fit the 22 language that's used there.</p> <p>23 Q. Well, in paragraph 86, 24 Mr. Koberna is talking about how: 25 "...we introduced the cornstarch</p>

<p style="text-align: right;">Page 182</p> <p>1 variant as an alternative to talc for 2 use on babies. Due to the talc issue 3 and some doctors recommending for moms 4 not to use powder on their babies, we 5 don't promote powder to moms."</p> <p>6 You're telling me that you can't 7 reasonably read that couple of sentences to mean 8 that the recommendation by doctors that you 9 referenced, all the way back in 1966, not to use 10 baby powder on infants because of the risk of 11 aspiration?</p> <p>12 MS. PARFITT: Objection.</p> <p>13 BY MR. EWALD:</p> <p>14 Q. Is that not what they're 15 referring to there?</p> <p>16 MS. PARFITT: Sorry, John. Objection, 17 form, misstates the evidence.</p> <p>18 THE WITNESS: No, I don't read it that 19 way at all because there's nothing that I 20 encountered in any of the evidence that I 21 reviewed which suggested that one of the 22 benefits of the cornstarch variant had to do 23 with inhalation. And so I don't know why he 24 would mention a cornstarch variant in reference 25 to inhalation. There are other aspects of</p>	<p style="text-align: right;">Page 184</p> <p>1 testimony. 85 reads: 2 "Basically, I'm thinking it would 3 be in the brand's...interest to 4 develop a strategy to move out of the 5 baby aisle for our talc product and 6 either create a direct Adult 7 proposition or simply replace the talc 8 ingredient with cornstarch." 9 So that, to me, says he's talking 10 about an ingredient issue. The ingredient he's 11 worried about is talc. And should we replace it 12 with cornstarch? And so I -- and don't know -- 13 I can't guess at what exactly is in Todd True's 14 head and if he wants to give cancer to adults or 15 something like that. I don't know at all. But 16 you know, yeah.</p> <p>17 Q. All right. We talked about a 18 little bit earlier on paragraph 75.</p> <p>19 A. Yeah.</p> <p>20 Q. One second. I'll get back to 21 that one. Let's talk about -- oh, we've going 22 about hour, twelve minutes. I'm happy to keep 23 on going, but if people want to take a break, 24 I'm happy to take a break.</p> <p>25 A. Yeah, take a break. I could use</p>
<p style="text-align: right;">Page 183</p> <p>1 Koberna's reply that are concerning, right, 2 because he says, if I'm not wrong, he's the 3 director of, basically, marketing public 4 insights, strategic insights, right? He says, 5 we don't promote powders to moms. That's not 6 true at all. They advertise powders to moms. 7 There's a long history of them advertising to 8 adult women. And they created special lines 9 around that.</p> <p>10 So I think there's a lot that, in his 11 reply, that's just factually not correct. And 12 the only way I can make sense of it is that he's 13 talking about talc as an ingredient and 14 cornstarch as an alternative ingredient.</p> <p>15 BY MR. EWALD:</p> <p>16 Q. Right. And so you're -- and 17 again you're reading of 84 and 85, paragraphs, 18 and 86, I guess, too.</p> <p>19 A. Yeah.</p> <p>20 Q. The Todd True emails is that Todd 21 True is saying we can't have products that can 22 cause ovarian cancer used on babies. We need to 23 move that cancer causing product to the adult 24 aisle. That's your testimony?</p> <p>25 A. Just to quote -- yeah, that is my</p>	<p style="text-align: right;">Page 185</p> <p>1 the restroom.</p> <p>2 -- RECESS TAKEN AT 2:56 P.M.</p> <p>3 -- RESUME AT 3:07 P.M.</p> <p>4 BY MR. EWALD:</p> <p>5 Q. Dr. Newman, if you can turn 6 please to page 19 of your report, paragraph 75.</p> <p>7 A. Yes.</p> <p>8 Q. And you talk here about certain 9 statements from Dr. Alfred Wehner. And can you 10 explain to me why you included these two 11 paragraphs in your report?</p> <p>12 A. Because -- so my understanding is 13 Alfred Wehner is a consultant of Johnson & 14 Johnson. And then he is raising issues, two 15 people at Johnson & Johnson, to say that, you 16 know, I mean, I could just quote it directly, 17 but that, you know, to say that: 18 "industrial exposure to talc, 19 both by skin contact and 20 inhalation...presents no 21 significant risk' is 'outright 22 false.'" 23 And so it's certainly relevant to, you 24 know, what -- what does Johnson & Johnson know 25 or internally, what are some of the discussions</p>

<p style="text-align: right;">Page 186</p> <p>1 versus what are they telling people since this 2 mentions directly kind of what's communicated 3 publicly. 4 Q. Okay. And so is it your 5 interpretation of that document that Dr. Wehner 6 is somebody who believes there is a link between 7 talc and ovarian cancer? 8 A. Yes, that's how I interpret it. 9 Q. Let's look at the document itself 10 that you're citing to. It is -- you cite to the 11 one Bates base number of J&J000040596, dated 12 9/17/97. And, Michelle, I'll give you a chance 13 to find that. 14 MS. PARFITT: Thank you. I appreciate 15 that. John, for some reason, it is not coming 16 up, and I can't search, again, on my computer. 17 MR. EWALD: For whatever reason, it 18 might have been just me, I couldn't find it in 19 the... 20 MS. PARFITT: In the Dropbox. 21 MR. EWALD: In the Dropbox. I'll put 22 it in the chat. 23 MS. PARFITT: I'm still looking to see 24 whether or not we got a bad number on it. 25 MR. EWALD: I'll put it in the chat.</p>	<p style="text-align: right;">Page 188</p> <p>1 witness a moment to read. And please let me 2 know, Doctor, when you want me to scroll down. 3 A. Okay. Sorry. That was the first 4 paragraph. This one's a little dense. Yeah. 5 Okay. I finished that first page. 6 MS. PARFITT: You might want to read 7 the whole thing. 8 THE WITNESS: Yep. Okay. And I'm 9 just now at the paragraph that begins, "Mike." 10 Okay, all set. 11 BY MR. EWALD: 12 Q. So after reviewing this two page 13 document again, is it still your opinion that 14 Dr. Wehner has concluded that cosmetic talc does 15 not cause ovarian cancer? Causes ovarian 16 cancer? 17 A. That's not -- 18 MS. PARFITT: Objection to form. 19 Please. 20 THE WITNESS: Sorry. That's how I'm 21 interpreting what he's saying. 22 BY MR. EWALD: 23 Q. How are you interpreting it? 24 A. Sure. The way that I interpret 25 it is he's critiquing the messaging, which is</p>
<p style="text-align: right;">Page 187</p> <p>1 MS. PARFITT: I appreciate that. 2 THE WITNESS: I'm just gonna do the 3 same thing as before. I'll open it here, but 4 I'll just read off of yours. I think it should 5 be fine. 6 BY MR. EWALD: 7 Q. Yes. It's a two page document, 8 so hopefully it works, okay. And so I don't 9 forget, we are marking this as Exhibit 12. 10 EXHIBIT NO. 12: Letter from Alfred 11 Wehner to Michael Chudkowski at J&J 12 Consumer Products. J&J Bates Number 13 000040596, September 17, 1997. 14 BY MR. EWALD: 15 Q. And this is not me being the 16 grammar or typo police. But just so you 17 know, you have Alfred Werner and it's Wehner. 18 W-E-H. It's kind of hard to read a little bit. 19 Just trying to help you out. 20 A. Thank you. I just completely -- 21 I read that as an "R." My apologies. 22 Q. No, doesn't matter to me. And 23 September 17, 1997, J&J Bates Number 000040596, 24 and it's directed to Michael Chudkowski at J&J 25 Consumer Products. And I will now give the</p>	<p style="text-align: right;">Page 189</p> <p>1 in -- at multiple points, he's saying that you 2 have either denied associations or have said 3 that there is no evidence whatsoever and that's 4 simply false. Or you said that translocation is 5 possible. That is false. To me, I interpret 6 that not as a statement about causality, but 7 about messaging, and that he is critiquing the 8 message of the CFTA, sorry, CTFA, and, you know, 9 in conjunction, Johnson & Johnson. 10 Q. And so then with that 11 interpretation, how does that impact your 12 opinions in this matter such that you've quoted 13 a couple of different sentences in your report? 14 A. So my understanding, and this is 15 based on the last paragraph in that document, is 16 that he's a consultant with Johnson & Johnson 17 under retainer. So at some level, this is 18 somebody whose opinion that they respect and is 19 able to comment on these issues. And then he's 20 basically saying, Hey, as a friend, I gotta let 21 you know the way that you're handling this is 22 all wrong because you're denying any kind of 23 relationship whatsoever, and you just don't have 24 the footing to say that, which is, you know, 25 exactly what I observe in, kind of, looking at</p>

<p style="text-align: right;">Page 190</p> <p>1 many, many documents over a long period of time 2 is that, you know, Johnson & Johnson is saying 3 one thing to consumers that's very definitive, 4 where behind the scenes internally, there are a 5 lot more questions and debate.</p> <p>6 Q. All right. Let's talk a little 7 bit about Facts About Talc, and in particular 8 your discussion in paragraph 95 on page 3 and 4.</p> <p>9 A. Okay, sure.</p> <p>10 Q. You there?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And you state: 13 "To this day, the company 14 maintains that asbestos in talc is 15 nothing more 'an urban legend.' 16 [company's website, 'Facts about 17 Talc']. The company highlights four 18 studies which do not find an elevated 19 risk of cancer among cosmetic talcum 20 powder users. However, it does not 21 discuss the dozens of peer-reviewed 22 studies and meta-analyses which do 23 find evidence of a statistically 24 significant relationship between 25 talcum powder use and cancer. Such</p>	<p style="text-align: right;">Page 192</p> <p>1 that were really relevant to marketing issues, 2 and I didn't find a lot. Most of the documents 3 that I observed on the Facts About Talc site 4 were about testing and, like, there the presence 5 of asbestos and actually pretty technical 6 documents that, you know, I wasn't able to 7 interpret. So, you know, I didn't find a lot 8 relevant to marketing.</p> <p>9 Q. So, then, is it fair to say that 10 the -- well, let me ask you the question. Do 11 you have a sense of the J&J internal documents 12 with Bates numbers that you include in your 13 table of contents list, how many of those you 14 identified yourself through searching facts 15 about talc?</p> <p>16 A. I couldn't say for certain.</p> <p>17 Q. Yeah, but from what you were 18 saying before, you would expect a very large 19 number of them?</p> <p>20 A. My recollection is that there 21 weren't a lot of marketing documents there.</p> <p>22 Q. And on the documents that 23 plaintiff's counsel provided you, I understand 24 the request that you gave them of what you were 25 looking for. How did they provide the documents</p>
<p style="text-align: right;">Page 191</p> <p>1 biased sampling of the peer-reviewed 2 literature is in direct contradiction 3 to universally accepted scientific 4 practices as well as company's 5 invitation for consumers to 'review 6 the evidence and make up your mind.'" 7 Did I read that correctly?</p> <p>8 A. Yes.</p> <p>9 Q. And do you stand by that?</p> <p>10 A. I do, yeah.</p> <p>11 Q. How -- when you said you reviewed 12 Facts About Talc, what parts did you review?</p> <p>13 A. I went through all of the 14 separate pages, and then, there within the 15 litigation section, there is a documents folder. 16 And I downloaded that documents folder. You 17 know, there are thousands of documents there. 18 didn't read all of those documents. I looked at 19 many documents in those folders, but that was 20 one of the earlier sources that I consulted.</p> <p>21 Q. And on the documents that you 22 downloaded and searched through, what sort of 23 searches did you conduct to, kind of, wade your 24 way through them?</p> <p>25 A. Again, I was looking for things</p>	<p style="text-align: right;">Page 193</p> <p>1 to you?</p> <p>2 A. So I was provided with a link to 3 Dropbox, and then there would be folders within 4 the Dropbox that would correspond to the 5 categories of documents that I had asked about. 6 And then I would just go through, kind of, one 7 by one. And as I mentioned before, you know, 8 some of those documents were relevant, some of 9 them weren't relevant. And so then I would just 10 focus on the ones that pertain to the marketing 11 issues.</p> <p>12 Q. All right. I'm gonna share my 13 screen. For the record, I do have a PDF of this 14 part I'm going to be talking about. I'm going 15 to start -- the current version of the live 16 website. Do you have a sense of the last time 17 you looked at Facts About Talc, Doctor?</p> <p>18 A. I've definitely looked at it 19 since I submitted my report, but I couldn't say 20 exactly how long ago it was.</p> <p>21 Q. But -- fair enough. And when you 22 talk about the company highlighting four studies 23 and not discussing the case control studies are 24 trying to find what -- what do you think you're 25 referring to?</p>

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<p style="text-align: right;">Page 194</p> <p>1 A. I believe it's under the studies 2 tab, is my memory. Okay. And then, so then 3 those are the four studies, I believe, that are 4 mentioned. So it highlights the results of 5 those studies. But in my search online, I think 6 I identified, I don't know, probably between 30 7 something studies that I found, you know, and so 8 that's what I was referring to.</p> <p>9 Q. Okay. Did you see the part where 10 it's right below it says "Other Studies"?</p> <p>11 A. Yes, yes.</p> <p>12 Q. Okay. And talks about the fact 13 that there's a -- not that. Sorry:</p> <p>14 "...reconfirms that a statistical 15 association between ovarian cancer and 16 powder users is not found in large, 17 prospective cohort studies, although 18 some, but not all, case-control 19 studies do indicate a slight 20 statistical association. Case-control 21 studies are studies where groups of 22 people with a history of a specific 23 disease are asked questions about 24 different possible risk factors. 25 These risk factors can include use of</p>	<p style="text-align: right;">Page 196</p> <p>1 question? 2 MR. EWALD: Yes. 3 MS. PARFITT: Thank you. 4 THE WITNESS: Yes, I acknowledge 5 that's what it says, but that's actually the 6 exact text that I used for the study that I 7 conducted, that we talked about earlier. So 8 when I read this information, I said, Wow, 9 they're really burying that information in the 10 paragraph. It's tucked away in the middle of 11 the paragraph. And as a reader, just 12 linguistically, it's a very complicated 13 sentence. You have to do a lot of work to 14 decode what that sentence means. And so the 15 question was, if you disambiguate that sentence 16 for consumers, for a reader, do they come to a 17 different impression? And at least I found 18 initial pilot evidence to suggest, yeah, that 19 even today, presenting it as just, oh, and by 20 the way, there's, this statistical association 21 masks a reality for consumers that appears to 22 change their beliefs and their trust in the 23 company.</p> <p>24 BY MR. EWALD: 25 Q. Now, hold on. You were -- when I</p>
<p style="text-align: right;">Page 195</p> <p>1 certain products in the past. One 2 potential reason that some have found 3 slight statistical associations is the 4 potential for an overestimation of the 5 true association due to 'recall bias.' 6 Recall bias is when people with a 7 disease are more likely to 8 overestimate their exposure to these 9 risk factors than people without that 10 disease. In these studies, women who 11 know they have ovarian cancer will try 12 hard to remember anything that might 13 be important to explain why they got 14 this terrible disease, which can 15 artificially make it appear that women 16 with cancer use more talcum powder." 17 Did I read that correctly? 18 A. You read it correctly, yes. 19 Q. And so you acknowledge that on 20 Facts About Talc section about studies, they 21 discussed the case-control studies? 22 MS. PARFITT: I'm going to object to 23 the question, John, as I appreciate. Is he 24 acknowledging that that's what you just read is 25 what appears on Facts About Talc? Is that the</p>	<p style="text-align: right;">Page 197</p> <p>1 asked you earlier about this pilot study that 2 you termed it, that you didn't include in your 3 report whether you're relying on it for your 4 opinions, you said no, correct? 5 A. No, I'm not relying on it for my 6 opinions. No, no. But I think that -- you're 7 asking, do I acknowledge that they're saying 8 that, oh, okay, there are some studies that find 9 it. But, yes, even here, as they're saying it, 10 they're burying the lead. The way that 11 information is presented is confusing. And I 12 don't, given my years of doing this, my many 13 years of doing this, I don't think I needed to 14 run a study to confirm that fact. I did because 15 I was curious and I was interested. But after a 16 very long time of understanding how people 17 decipher information and make decisions based on 18 that information, I thought, Wow, this is a 19 really convoluted way to present this 20 information. 21 Q. So you said "burying the lead." 22 Are you suggesting that the only appropriate way 23 to convey this information is if it precedes the 24 cohort study discussion? 25 MS. PARFITT: Objection. Misstates</p>

50 (Pages 194 - 197)

1 his testimony. 2 THE WITNESS: No, that wouldn't be my 3 claim. My claim is just that you have the 4 majority of the page that is saying there's no 5 effect, no effect, no effect. And basically 6 makes it read like these are the only studies 7 out there. And then there's a very technical, 8 difficult to read paragraph that says, well, and 9 there might be some other studies that find 10 something different. But even in acknowledging 11 that there's counter evidence, you know, they're 12 creating confusion for consumers. 13 BY MR. EWALD: 14 Q. Right. So in your report, on 15 page -- on paragraph 95, you say: 16 "However, it... 17 As in Facts About Talc: 18 "...does not discuss the dozens 19 of peer-reviewed studies and 20 meta-analyses which do find evidence 21 of a statistically significant 22 relationship between talcum powder use 23 and cancer." 24 And that's not correct, right? 25 MS. PARFITT: Objection, misstates his	Page 198 1 add the word "adequately" or "fairly" or 2 something like that. I think that's fair. 3 Yeah. 4 BY MR. EWALD: 5 Q. All right. Doctor, have you seen 6 what the American Cancer Society has to say 7 about the question of whether or not talc causes 8 of ovarian cancer? 9 A. The document that you have on the 10 screen, I don't recall ever seeing this document 11 before. 12 Q. Have you reviewed others -- 13 MS. PARFITT: John, are you marking 14 this? 15 MR. EWALD: I am marking this. Hold 16 on one second. 17 MS. PARFITT: I wasn't looking at 18 screen. I didn't even know it came up. So 19 sorry. 20 MR. EWALD: I'm going to mark Exhibit 21 13, PDF of the Facts About Talc studies page. 22 EXHIBIT NO. 13: Studies - Facts About 23 Talc. 24 MS. PARFITT: Okay. 25 MR. EWALD: And we'll mark this as
1 testimony and the evidence in this report. 2 THE WITNESS: Yeah, I would say, you 3 know, there is -- you know, I would -- I stand 4 by that comment because there is no kind of 5 equal treatment or acknowledgment, and, you 6 know, we could do more studies. But my strong 7 suspicion is that, you know, the majority of 8 consumers don't even scroll that far down the 9 page or read that paragraph in its entirety. 10 And somebody just looking at this information 11 would get a very different impression than what 12 I believe the truth is. 13 BY MR. EWALD: 14 Q. I want to be clear on this one, 15 Doctor. So when, in your mind, because the 16 website does not give equivalent space to the 17 case-control studies as it does the cohort 18 studies, it is equivalent to, as you state in 19 your report, it does not discuss the case 20 control studies at all? 21 MS. PARFITT: Objection to form. 22 BY MR. EWALD: 23 Q. That's the same? 24 MS. PARFITT: Objection to form. 25 THE WITNESS: Yeah, you know, I might	Page 199 1 Exhibit 14. And "this" being American Cancer 2 Society Cancer Facts and Figures 2024. 3 EXHIBIT NO. 14: American Cancer 4 Society Cancer - Facts and Figures 5 2024. 6 BY MR. EWALD: 7 Q. Doctor, you said you don't think 8 you've seen this one. 9 Have you seen any other statements by 10 the American Cancer Society as it relates to 11 talc and ovarian cancer? 12 A. I don't know. 13 Q. And if we look at the different 14 cancers -- 15 MS. PARFITT: Just again, if I -- he 16 has not seen this document before, the 2024 17 cancer. So I know you want to take him to, 18 probably, a page. I bet we could bet money on 19 which one you're taking him to, but he hasn't 20 seen the document at all. So maybe if you can 21 give us some guidance. It's multi -- as we both 22 know, it's a lot of pages. 23 MR. EWALD: Yeah, hold on. 24 MS. PARFITT: And so unless I can. 25 MR. EWALD: Put it in the chat?

<p style="text-align: right;">Page 202</p> <p>1 MS. PARFITT: I can provide him with a 2 copy of the whole document. 3 MR. EWALD: That's fine. I'll put the 4 full document in the chat. 5 MS. PARFITT: Give me a moment and 6 I'll give him a copy as well. John, for the 7 record, I'm showing the doctor a copy of the 8 Cancer Facts and Figures, 2024. 9 MR. EWALD: Great. 10 THE WITNESS: Okay. 11 MS. PARFITT: Okay. And just for the 12 record, it is -- he's not seen this before, and 13 it's 82 pages. 14 MR. EWALD: Okay. Hold on one second. 15 Okay. So for this, and it is 82 pages, it 16 talked about a lot of different cancers. We are 17 going to focus on ovary, which is on page 22. 18 THE WITNESS: You said 82? 19 MS. PARFITT: No. 20 MR. EWALD: 22. 21 THE WITNESS: Twenty-two. Okay. 22 BY MR. EWALD: 23 Q. And if I put it up on the screen 24 so everybody can see. All right. And starts on 25 page 22, talks about incidents trends, and new</p>	<p style="text-align: right;">Page 204</p> <p>1 answer your question, which is, no, it doesn't. 2 I've lost the screen here. Oh, here you are. 3 Okay. 4 No, it doesn't change my conclusion, 5 because that's not what Johnson & Johnson is 6 telling people. The public statements are not: 7 The weight of the evidence does not support. 8 They're saying: Does not support. You know, 9 there's no evidence. And that's very different. 10 You know, as we've talked about already, I think 11 it's very different to say there is no evidence 12 or, you know, it's perfectly safe than to make a 13 statement like "the weight of the evidence does 14 not support." So, no, for what I'm speaking 15 to -- and obviously, I'm not speaking to 16 causation at all.</p> <p>17 BY MR. EWALD:</p> <p>18 Q. And in making that and offering 19 that opinion as to what is the appropriate way 20 to articulate the state of the science to 21 consumers, what authorities do you rely on?</p> <p>22 A. Again --</p> <p>23 MS. PARFITT: Objection, form.</p> <p>24 THE WITNESS: -- that's directly my 25 expertise. And so that when consumers</p>
<p style="text-align: right;">Page 203</p> <p>1 cases and deaths and risk factors. And under 2 "Risk factors," that's where it talks about a 3 variety of them. The final sentence, do you see 4 that? Where it says: 5 "The weight of the evidence does 6 not support an association between 7 ovarian cancer and genital exposure to 8 talc based powder." 9 A. I do see where it says that 10 under -- you're talking about the paragraph that 11 starts with "Risk factors"?</p> <p>12 Q. Yes, sir.</p> <p>13 A. Yes. Okay. Yep, I see that.</p> <p>14 Q. And does a determination by an 15 organization like the American Cancer Society 16 the weight of evidence does not support an 17 association between ovarian cancer and genital 18 exposure talc based powder, have any impact on 19 your opinions in this case?</p> <p>20 MS. PARFITT: Object to the question 21 that misrepresents what that document is and 22 what that document actually says and who 23 sponsored that document.</p> <p>24 THE WITNESS: So I don't know anything 25 about the origin, but -- but I think I can still</p>	<p style="text-align: right;">Page 205</p> <p>1 understand statements, they treat absolute 2 statements very differently than statements that 3 are hedging or conditional or something like 4 that. So we talked before about, you know, pure 5 natural spring water versus pure natural spring 6 water with 0.001 percent additives, that people 7 treat those qualitatively different. They're on 8 completely opposite sides of the scale of, would 9 you be interested in purchasing this product? 10 And so there -- there's -- and that's just not 11 my own -- I mean, that is a published study that 12 I authored, but there are dozens of studies 13 which make very similar points about, you know, 14 how consumers understand information.</p> <p>15 BY MR. EWALD:</p> <p>16 Q. Well, I understand that from a -- 17 well, let me ask you this. When you said 18 exactly what your expertise is in, when we 19 talked about your expertise earlier in the day, 20 you testified that you have not published on any 21 article in the peer-reviewed literature that 22 discusses how a company should articulate to its 23 consumers potential health risk of its product, 24 right?</p> <p>25 MS. PARFITT: Objection.</p>

52 (Pages 202 - 205)

<p style="text-align: right;">Page 206</p> <p>1 THE WITNESS: And just to clarify, we 2 would never make any kind of -- in the kind of 3 research that I do, we would never make 4 normative statements. We would never make, you 5 know, here's an empirical result telling 6 companies what they ought to do. We're 7 investigating the underlying psychology. 8 So what are the rules by which, or the 9 underlying psychological mechanisms that people 10 use to navigate the world around them, to decide 11 what kind of products they want to purchase, to 12 evaluate all kinds of information. And so we 13 would talk about a more generalized principle. 14 And one principle here that's really relevant is 15 people treat absolutes very different than they 16 treat, you know, non-absolutes, even if it's a 17 shred of difference. And we know that to be 18 true in lots of different domains and would also 19 apply to something like health information or 20 risks.</p> <p>21 BY MR. EWALD: 22 Q. Okay. And when you talk about 23 it, you wouldn't have a normative statement like 24 you're making here, are you -- you would also 25 agree, though, that you have not published any</p>	<p style="text-align: right;">Page 208</p> <p>1 Q. Yes. All right. So on -- 2 MS. PARFITT: John, are you done with 3 the Facts about -- or cancer facts? 4 MR. EWALD: I am. Thank you. 5 MS. PARFITT: Thank you. 6 BY MR. EWALD: 7 Q. So, Doctor, yesterday, and I 8 believe Ms. Parfitt referred to this earlier, 9 that we received an email from her firm that 10 included some website links reflecting -- well, 11 let me put it -- some website links in 12 connection with your review in this case. Is 13 that fair? 14 A. Yeah. 15 Q. Let me start all over again. 16 You would look at some websites and 17 provide those links to Ms. Parfitt in connection 18 with your work here. 19 A. That's correct, yes. 20 Q. I want to get into -- there's -- 21 you don't know whether probably Ms. Parfitt sent 22 the email or who sent the email. So that's why 23 I was trying to get away from that. 24 I want to get a little bit sense of 25 some of those and how, if at all, they impacted</p>
<p style="text-align: right;">Page 207</p> <p>1 paper in the scientific literature that 2 discusses any empirical data of how companies 3 communicate with their customers about health 4 risk of a product, fair? 5 MS. PARFITT: Objection. 6 THE WITNESS: Just so I understand. 7 So you're asking, have I published on the 8 communication of health risks specifically? 9 BY MR. EWALD: 10 Q. Yes. 11 A. No, I have not. But I have 12 published many papers that are relevant to how 13 consumers interpret information and specifically 14 the kinds of information that they might weigh 15 in this exact case. Like, for instance, 16 statements about absolutes, or the origin of a 17 product, or the production process, et cetera. 18 Q. And in those papers that you 19 published, you provided experimental research to 20 support your findings, correct? 21 MS. PARFITT: Objection, misstates his 22 testimony. 23 THE WITNESS: Yeah, I conducted 24 experiments, correct, yes. 25 BY MR. EWALD:</p>	<p style="text-align: right;">Page 209</p> <p>1 your review. And first one that I want to ask 2 you about... 3 MS. PARFITT: Hey John. 4 MR. EWALD: Yes. 5 MS. PARFITT: A quick question. And 6 I'm sorry, I'm sitting down at the end of the 7 table. I don't have a computer, so it's a 8 little bit hard for me to hear as well at times. 9 Did you -- when you were talking about the 10 websites, that was something we gave you 11 yesterday, but that was something that we 12 realized was omitted from the Dropbox, but not 13 something that was just recently pulled by 14 Dr. Newman. You understand that. If you want 15 to ask -- 16 MR. EWALD: Yes. 17 MS. PARFITT: I just wanted to be 18 careful. That's our error. We didn't do a very 19 good administrative job of collecting 20 everything. 21 MR. EWALD: And I wasn't my point, my 22 lack of articulateness -- 23 MS. PARFITT: No, you're fine. I 24 can't hear down here, so no worries. We're a 25 good team together. You can speak and I can't</p>

<p>1 hear. Okay.</p> <p>2 BY MR. EWALD:</p> <p>3 Q. Okay. So if I look at, one of</p> <p>4 them was for the website safecosmetics.org, is</p> <p>5 that one of them?</p> <p>6 A. I believe so.</p> <p>7 MS. PARFITT: John, again, just for</p> <p>8 the record, I'm going to just hand him what we</p> <p>9 sent to you.</p> <p>10 MR. EWALD: Yeah.</p> <p>11 MS. PARFITT: If that's all right.</p> <p>12 That will probably make it a little bit easier,</p> <p>13 but I wanted to let you know.</p> <p>14 MR. EWALD: Well, and actually I</p> <p>15 appreciate that because the email that I have</p> <p>16 was forwarded with lots of other people,</p> <p>17 internal names on it, so I was trying to avoid</p> <p>18 having to show that. So if you have that email,</p> <p>19 that'd be great.</p> <p>20 MS. PARFITT: Yes. There you go. I</p> <p>21 have the email but I've got the document that</p> <p>22 was sent.</p> <p>23 BY MR. EWALD:</p> <p>24 Q. And so the first one that I want</p> <p>25 to talk about, I'm not going to talk about all</p>	<p>Page 210</p> <p>1 MS. PARFITT: Objection, form.</p> <p>2 THE WITNESS: None whatsoever. I know</p> <p>3 very little about this organization. And again,</p> <p>4 this wasn't used to inform my opinions. This</p> <p>5 was like, in trying to understand, okay, well,</p> <p>6 what would somebody -- what kind of search</p> <p>7 results would somebody get if they just typed in</p> <p>8 these issues? And that is one of the first</p> <p>9 websites that appears in search. And so my</p> <p>10 understanding of this, the reference list is</p> <p>11 just everything that -- or, you know, the things</p> <p>12 that I looked at but weren't necessarily things</p> <p>13 that I directly relied my opinion on.</p> <p>14 BY MR. EWALD:</p> <p>15 Q. Another one I want to ask you</p> <p>16 about was Drug Watch. And this one, we have a</p> <p>17 site, so I'll mark as Exhibit 15 the part of the</p> <p>18 webpage, safecosmetics.org, that we were looking</p> <p>19 at on chemicals/talc.</p> <p>20 EXHIBIT NO. 15: Campaign for Safe</p> <p>21 Cosmetics from safecosmetics.org site.</p> <p>22 BY MR. EWALD:</p> <p>23 Q. And for Exhibit 16 for</p> <p>24 drugwatch.com, I'll have a PDF of this webpage,</p> <p>25 Talcum Powder - "Is Talc in Makeup Safe?" This</p>
<p>Page 211</p> <p>1 of them, is the safecosmetics.org website, which</p> <p>2 at least has a name, Campaign For Safe</p> <p>3 Cosmetics, CSC, and it talks about talc. Do you</p> <p>4 see that?</p> <p>5 A. Yeah.</p> <p>6 Q. This is something that you</p> <p>7 reviewed in connection with your opinions in</p> <p>8 this case.</p> <p>9 A. Yeah, I wouldn't say that I</p> <p>10 relied on it maybe, to, for reference, those</p> <p>11 websites that I identified, basically, I was</p> <p>12 trying to simulate, okay, if a consumer wanted</p> <p>13 to understand this issue and went online and</p> <p>14 Googled "talcum powder" or "talcum powder and</p> <p>15 cancer," what would come up? And at least the</p> <p>16 way that the Google algorithm understands me,</p> <p>17 these are some of the initial websites that came</p> <p>18 up. Kilmer House is not one of those, but these</p> <p>19 are basically, okay, well, what would be the</p> <p>20 exercise of a person who's trying to educate</p> <p>21 themselves about this issue?</p> <p>22 Q. Do you have any understanding of</p> <p>23 Campaign for Safe Cosmetics' reputation for</p> <p>24 reliable statements of the scientific</p> <p>25 literature?</p>	<p>Page 213</p> <p>1 is also something that you looked at?</p> <p>2 EXHIBIT NO. 16: "Is Talc in Makeup</p> <p>3 Safe?" from drugwatch.com site.</p> <p>4 THE WITNESS: Again, not something</p> <p>5 that I used to form my opinion, but in trying to</p> <p>6 understand what would a consumer learn about</p> <p>7 this issue, it's a website that I looked at,</p> <p>8 yes.</p> <p>9 BY MR. EWALD:</p> <p>10 Q. Okay. And if we go down, it says</p> <p>11 an ad:</p> <p>12 "See if you qualify for a</p> <p>13 lawsuit. Were you diagnosed with</p> <p>14 ovarian cancer or mesothelioma after</p> <p>15 using talcum powder. Get a free case</p> <p>16 review."</p> <p>17 Do you see that?</p> <p>18 A. I do see it, yes.</p> <p>19 Q. And you have an understanding as</p> <p>20 to who Drug Watch's partners are and which law</p> <p>21 firms are involved in this joint endeavor?</p> <p>22 A. None whatsoever.</p> <p>23 Q. Yeah. Do you have an</p> <p>24 understanding of -- well, let me put it this</p> <p>25 way. One of the materials that I saw in your</p>

<p style="text-align: right;">Page 214</p> <p>1 reference list is one of the complaints, legal 2 complaints for the MDL. Did you review that? 3 A. Yes, I did. Yeah. 4 Q. Do you have an understanding as 5 to how many cases are part of this MDL 6 proceeding? 7 A. Not with any kind of specificity, 8 no. 9 Q. Do you have an understanding as 10 to the amount and coverage of marketing by 11 plaintiff's firms about talc and ovarian cancer 12 that has happened over the years? 13 A. No, I do not. 14 Q. Do you take that into account at 15 all when you were considering impressions that 16 Johnson & Johnson's statements may have on 17 consumers? 18 MS. PARFITT: Objection. 19 THE WITNESS: Again, I mean, what I 20 was asked to review and to look into in this 21 case are, you know, essentially, what did J&J 22 communicate about their products and what did 23 they know internally? And so, you know, I 24 didn't really start to look at all of the other 25 bodies and players that are involved. I</p>	<p style="text-align: right;">Page 216</p> <p>1 consumers believed about Johnson's 2 Baby Powder was central to what they 3 believed about the Johnson's Baby 4 brand; and what they believed about 5 the Johnson's Baby brand was central 6 to what they believed about Johnson & 7 Johnson. At the core of all that was 8 not a belief about Johnson Baby 9 Powder's smoothness, or absorbency, or 10 fragrance; rather, it was trust. 11 Trust in the product and more 12 importantly, trust in the company." 13 I read that correct so far? 14 A. Yeah, absolutely. 15 Q. Then you say: 16 "And the effects of that trust in 17 this case are immense. When consumers 18 may have encountered concerns about 19 the safety of JBP and talc, those 20 concerns were not evaluated tabula 21 rasa - devoid of any pre-existing 22 expectations. Rather, those concerns 23 were evaluated against generations of 24 advertising which strategically 25 portrayed the company as trustworthy,</p>
<p style="text-align: right;">Page 215</p> <p>1 understand there's a lot of complexity on this 2 issue. I was looking at a very narrow segment. 3 BY MR. EWALD: 4 Q. Well, then let's look at your 5 report. Hold on. And I want to look at the 6 very end of the substantive report. I have it 7 up here. You can also look at your paper copy. 8 A. Yeah. 9 Q. You state on page 25, paragraph 10 99:</p> <p>11 "The marketing issues in this 12 case are of central importance to 13 understanding how the company affected 14 and continues to affect consumers' 15 beliefs about JBP and the health 16 concerns regarding talc. The 17 company's marketing strategy for JBP 18 was not simply to make consumers aware 19 of products and communicate the 20 product's benefits. Rather Johnson & 21 Johnson acted to target consumers' 22 emotions and their core appreciations 23 of trust, rooted in the sacred bond 24 between mother and child. As the 25 company's documents indicate, what</p>	<p style="text-align: right;">Page 217</p> <p>1 innocent, and first and foremost, 2 concerned about customers' safety and 3 wellbeing. As a result, the company's 4 unequivocal denials of any wrongdoing 5 or potential harm from talc had, and 6 continue to have, an outsized impact 7 on consumers' beliefs and behaviors." 8 Did I read that correctly? 9 A. You did, yes. 10 Q. And so there you were talking 11 about that second segment that I read, just 12 read, when consumers may have encountered 13 concerns about the safety of JBP, how the 14 consumers evaluated those concerns, and the 15 results of the company's unequivocal denials on 16 consumers' beliefs and behaviors, right? 17 A. That's correct, yes. 18 Q. What, if any, evidence do you 19 have with those conclusions that I just stated? 20 A. I mean, that is speaking to my 21 expertise. That is the value of what a 22 psychological understanding of consumer behavior 23 provides that it's not, you know, going way back 24 to some of the conversations that we were having 25 this morning about, you know, the blind taste</p>

55 (Pages 214 - 217)

<p style="text-align: right;">Page 218</p> <p>1 test, Coke versus Pepsi, or the Rabin article, 2 that, you know, I think there's a general 3 perception in the public that, you know, what 4 companies are essentially doing is just talking 5 about the product attributes, and consumers are 6 perfectly rational, and they're just buying 7 based on that.</p> <p>8 And the reality is something very 9 different. And that's what decades of 10 psychology have taught us about the nature of 11 consumer behavior. And so when Johnson & 12 Johnson says, Hey, our product is safe, because 13 there is that trust that's been developed for 14 decades and decades, that carries with it an 15 enormous amount of weight, and I think it's 16 important to acknowledge that Johnson & Johnson 17 is aware of this fact, right. They're in their 18 own marketing meetings. They're talking about, 19 Look, trust is the number one reason why people 20 are buying our products; it's central to our 21 brand; it's central to our brand strategy. And 22 in fact, even in one of the documents they 23 mentioned, and one of the benefits is that it 24 protects us in cases of crises. And in cases of 25 crises, then that trust really pays off for us.</p>	<p style="text-align: right;">Page 220</p> <p>1 impact on consumers' beliefs and 2 behaviors."</p> <p>3 What, if anything, do you have in the 4 way of specific data to support that statement?</p> <p>5 A. Sure. There are a number of 6 peer-reviewed studies which have looked 7 precisely at the issue of, for instance, 8 communications about public health crises and 9 what is the role of trust? And to summarize 10 many studies in this literature, basically, 11 trust is the critical factor. So if there's a 12 potential crisis about a product, the thing that 13 makes or breaks whether or not the consumers 14 believe the statements of the company is 15 completely explained by their trust, and that 16 trust in the company has an outside effect than 17 on their purchase decision. So that's not 18 directly data that I collected, but those are 19 kind of well-established patterns in the 20 literature.</p> <p>21 Q. Okay, tell me what article you're 22 referring to.</p> <p>23 A. Sure. Okay, let's see. At some 24 point, I did make note of -- okay, so there's a 25 2008 "Risk aversion and brand loyalty: The</p>
<p style="text-align: right;">Page 219</p> <p>1 So this is a smart strategy.</p> <p>2 And so, you know, consumers aren't 3 able to fairly evaluate, okay, what's all of the 4 evidence out there? And just like the exercise 5 that we went through where they're looking at 6 different websites, Well, okay, I'm looking at 7 different information, but if Johnson & Johnson 8 is telling me that it's safe, it must be safe, 9 because they've been telling me I can trust them 10 for 100 years. And that, you know, that is, I 11 think, the real value of what psychology 12 provides in understanding this case and the 13 marketing issues at play.</p> <p>14 Q. Well, you talked again about the 15 Coke example, but as we discussed, for those 16 types of published studies, there is empirical 17 evidence, experimental studies that are 18 conducted to support those conclusions, correct?</p> <p>19 A. Correct, yes.</p> <p>20 Q. Okay. And when you say here: 21 "As a result, the company's..." 22 That is, Johnson & Johnson's: 23 "...unequivocal denials of any 24 wrongdoing or potential harm from talc 25 had, and continue to have, an outsized</p>	<p style="text-align: right;">Page 221</p> <p>1 mediating role of brand trust and brand affect."</p> <p>2 And that's in the Journal of Product and Brand 3 Management. Specifically on the issues of 4 trust, another article, 2016 "Brand 5 relationships and risk: Influence of risk 6 avoidance and gender on brand consumption." You 7 know, those are -- those are a couple, but we're 8 not talking about boutique or bespoke findings. 9 I mean, it's part of a much larger pattern that 10 what consumers understand to be true about what 11 companies say about their products is determined 12 by trust. That if we want to say, well, what's 13 the psychological factor that really explains 14 it? Well, it's trust. And I don't think that's 15 a controversial point about the nature of 16 psychology or consumer behavior.</p> <p>17 Q. Well, if we're talking about the 18 specific facts that you're discussing in this 19 case, and that you are offering opinions to a 20 reasonable degree of professional certainty 21 about, is it your position that this assertion: 22 "As a result, the company's 23 unequivocal denials, any wrongdoing or 24 potential harm from talc, had 25 continued to have, an outsized impact</p>

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<p style="text-align: right;">Page 222</p> <p>1 on consumers beliefs and behaviors."</p> <p>2 Is true for what period of time?</p> <p>3 A. Well, I would -- I mean, I would</p> <p>4 say starting, you know, in 1982. And I don't</p> <p>5 know, I don't know about the -- you know,</p> <p>6 currently if you looked at things -- but again,</p> <p>7 you know, the study that we were, were talking</p> <p>8 about before, where the information about, well,</p> <p>9 there's some studies that find a statistical</p> <p>10 association would suggest that even currently to</p> <p>11 this day.</p> <p>12 But it's very complicated. One thing</p> <p>13 that we would do in any kind of psychological</p> <p>14 study is remove information about the company</p> <p>15 itself so it's not influencing people. We don't</p> <p>16 want people's preexisting beliefs to come to the</p> <p>17 table. So he would say, in the absence of that</p> <p>18 information, what kinds of psychological</p> <p>19 principles are at play. And so it would be hard</p> <p>20 to conduct the study in the appropriate manner,</p> <p>21 using Johnson & Johnson specifically, or naming</p> <p>22 Johnson & Johnson, because I think he would</p> <p>23 bring into that a lot of other preexisting, you</p> <p>24 know, beliefs from consumers.</p> <p>25 Q. So I'm a little confused. I</p>	<p style="text-align: right;">Page 224</p> <p>1 consumers on the Facts About Talc website. And,</p> <p>2 as we discussed before, you know, I think even</p> <p>3 now, the way that that information is</p> <p>4 communicated to consumers is not giving them the</p> <p>5 fair ability to make up their own minds about</p> <p>6 the issue; that it's presenting things in a very</p> <p>7 skewed way.</p> <p>8 BY MR. EWALD:</p> <p>9 Q. Okay. But you -- so you're</p> <p>10 talking about, on one end, what is happening</p> <p>11 from what Johnson & Johnson is projecting. But</p> <p>12 there's the other piece here that we're talking</p> <p>13 about, right, which is, what level of trust do</p> <p>14 consumers currently have in the Johnson &</p> <p>15 Johnson brand and specifically the talc product,</p> <p>16 fair.</p> <p>17 A. Sure, yes.</p> <p>18 Q. Right. And so what do you know</p> <p>19 about what currently is the state of consumer</p> <p>20 trust in Johnson & Johnson and specifically the</p> <p>21 talc brand?</p> <p>22 MS. PARFITT: Objection to form.</p> <p>23 THE WITNESS: The market research data</p> <p>24 that I reviewed isn't current data. But I can</p> <p>25 answer your question for periods of time that</p>
<p style="text-align: right;">Page 223</p> <p>1 thought I heard you say that you couldn't say</p> <p>2 currently or not whether it's true, but your</p> <p>3 sentence that I just read said "the company's</p> <p>4 unequivocal denials of any wrongdoing or</p> <p>5 potential harm from talc had, and continue to</p> <p>6 have, an outsized impact on consumers' beliefs."</p> <p>7 And do you agree with me that "continue to have"</p> <p>8 means it's still happening?</p> <p>9 A. Yeah. That is my expert opinion,</p> <p>10 yes.</p> <p>11 Q. Okay. And in doing that, for</p> <p>12 example, let's go back to the MDL litigation</p> <p>13 example. I'll represent to you that there are</p> <p>14 thousands of plaintiffs that have filed lawsuits</p> <p>15 against Johnson & Johnson over their talc use</p> <p>16 and subsequent ovarian cancer.</p> <p>17 Are all of those individuals, do they</p> <p>18 have an outsized impact on their consumer</p> <p>19 beliefs?</p> <p>20 MS. PARFITT: Objection, form.</p> <p>21 THE WITNESS: I don't -- you know,</p> <p>22 again, I'm thinking here about the way in which</p> <p>23 the company is communicating information. And</p> <p>24 if we were going to talk about currently, then</p> <p>25 it's like, what information is available to</p>	<p style="text-align: right;">Page 225</p> <p>1 are basically through the eighties, through the</p> <p>2 early 2000s, where Johnson & Johnson is</p> <p>3 collecting their own data about how do people</p> <p>4 perceive our brand? Why are people purchasing</p> <p>5 Johnson & Johnson? What do they say about it?</p> <p>6 And at the very top of that list is trust.</p> <p>7 People perceive Johnson & Johnson as</p> <p>8 trustworthy, as a caregiver, as synonymous with</p> <p>9 safety, a brand that's not going to hurt me.</p> <p>10 These are all directly quotes from Johnson &</p> <p>11 Johnson's market research. So I'm just going</p> <p>12 back to the data that they collected, which</p> <p>13 said, Look, what's central to our brand is</p> <p>14 trust; that's why people are coming to us.</p> <p>15 BY MR. EWALD:</p> <p>16 Q. Okay. We're talking about the</p> <p>17 data that Johnson & Johnson collected, and</p> <p>18 they're saying -- let's take a look at paragraph</p> <p>19 91 of your report. Let me know when you're</p> <p>20 there.</p> <p>21 A. Yes. Okay, I'm here.</p> <p>22 Q. States, "In 2020..." or you</p> <p>23 state:</p> <p>24 "In 2020, Johnson & Johnson</p> <p>25 announced the discontinuation of</p>

<p style="text-align: right;">Page 226</p> <p>1 Talc-based Johnson's Baby Powder in 2 U.S. and Canada [J&J Media Statement 3 May 19, 2020]. The stated reason for 4 discontinuing the product was 5 declining demand 'due in large part to 6 changes in consumer habits and fueled 7 by misinformation around the safety of 8 the product and a constant barrage of 9 litigation advertising.'"</p> <p>10 Did I read that correctly?</p> <p>11 A. You did, yes.</p> <p>12 Q. And do you have any basis to 13 disagree with Johnson & Johnson's statement that 14 "the change in consumer habits...fueled by 15 misinformation around the safety of the product 16 and a constant barrage of litigation 17 advertising."?</p> <p>18 A. Yeah. I mean, decades of 19 internal documents which suggest something very 20 different, right? I mean, I read this 21 statement, as, you know, there's a bunch of 22 people out there that are spreading lies. And, 23 you know, because of all their lies, we had to 24 pull this product. And that creates a lot of 25 confusion and tells a very different kind of</p>	<p style="text-align: right;">Page 228</p> <p>1 BY MR. EWALD: 2 Q. I did. Tell me. 3 A. I'm sorry. Can you please 4 repeat. I'm getting lost here. 5 Q. Okay. So according to counsel, 6 you have taken into account. So you've taken 7 into account the impact on consumers of the 8 constant barrage of litigation advertising with 9 respect to their view of Johnson & Johnson's 10 talc. 11 A. Well, I mean, in the sense that 12 if a consumer were to look at the issue today 13 and look at what kind of evidence is available 14 to them or readily available to them, and then, 15 you know, you might say, Oh, well, then they 16 would just kind of add it up. But that's, you 17 know, what my opinion is, is that's not what's 18 happening, because people are comparing that to 19 a century of advertising that says Johnson & 20 Johnson is a trustworthy brand; it's synonymous 21 with health and safety; it's -- you know, our 22 number one priority is your safety. And that 23 advertising message worked. Johnson & Johnson 24 knows that that advertising message worked. 25 And so, you know, it's not like the</p>
<p style="text-align: right;">Page 227</p> <p>1 story than what's happening behind the scenes 2 where, you know, for a decade and a half, let's 3 say, they're, Well, look, there are safety 4 concerns about our product. We should develop 5 this cornstarch alternative. How do we replace 6 it? Et cetera, et cetera. 7 So to say that it's just a bunch of 8 smoke in the air that has eventually caused us 9 to do this, I think, communicates something very 10 different than the reality to consumers. 11 Q. Well, again, you're talking about 12 what Johnson & Johnson's mindset may or may not 13 be. I'm talking about the other piece of the 14 puzzle, which is what the consumers are hearing, 15 what they're thinking. And from what you've 16 said, you have not taken into account what 17 impact the constant barrage of litigation 18 advertising has had on consumers' views of 19 Johnson & Johnson and talc products, correct? 20 MS. PARFITT: Objection, mistakes is 21 testimony. Done just the opposite. 22 BY MR. EWALD: 23 Q. You have? Tell me. 24 MS. PARFITT: Ask the question. Ask 25 the question, John.</p>	<p style="text-align: right;">Page 229</p> <p>1 scale is an accurate measurement, that, you 2 know, that advertising puts its thumb on the 3 scale and tips things so where people aren't 4 able to fairly evaluate. So I think you could 5 say, Well, I'm taking into account, yeah, that 6 there's litigation out there, but are consumers 7 able to accurately balance that against what 8 Johnson & Johnson are telling them? My opinion 9 is not. 10 Q. And what data do you rely on for 11 the proposition that plaintiff litigation, 12 advertising of talc and ovarian cancer claims is 13 not having an outsized impact on consumers' 14 views about talc. 15 MS. PARFITT: Objection, form. 16 THE WITNESS: I mean, again, we're 17 kind of circling back to the same -- in my mind 18 -- so I don't know how to answer the question 19 any differently, that people are not, you know, 20 I'd used the term tabula rasa; they're not 21 evaluating it blank slate. And so I would -- to 22 be fair, I haven't looked directly at litigation 23 and how litigation impacts consumers' mindset 24 now. 25 And my understanding of the time</p>

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1 period that, you know, I was really 2 investigating is not present day and things that 3 are happening after 2020 or after the onset of 4 litigation. I'm really trying to understand, 5 well, what happened in the hundred years before 6 then. So I couldn't, you know -- I guess, to be 7 fair, I can't speak directly to how that is 8 changing consumers' mindset now, but I also 9 don't think that's very germane to my opinion. 10 BY MR. EWALD: 11 Q. Well, are you walking back your 12 opinions in your report? Because we just talked 13 about how you said, "As a result, the company's 14 unequivocal denials of any wrongdoing or 15 potential harm from talc had, and continue to 16 have, an outsized impact on consumers' beliefs 17 and behaviors." 18 "Continue to have" clearly means 19 present day, right? 20 A. Yes, yes, yes. Yeah, yeah. 21 Q. So you're saying that that wasn't 22 part of your opinion? 23 MS. PARFITT: Objection. 24 MR. EWALD: So you misspoke? 25 THE WITNESS: No, no. It's very	Page 230 1 effect on their psychology today. 2 BY MR. EWALD: 3 Q. So I would like the court 4 reporter to, please, read back the question and 5 answer that preceded, I think it was one before 6 that where we just talked about where he talked 7 about 100 years. 8 And do you have a sense of what I'm 9 talking about, Leila? 10 THE REPORTER: I can check for you. I 11 would rather play it back than read it back, if 12 that's okay. 13 MR. EWALD: Whatever you find easier. 14 I hate listening to my voice. But go ahead. 15 THE REPORTER: One second. Did you 16 want just the answer, counsel? 17 MR. EWALD: Question and answer. 18 THE REPORTER: Okay, let me know if 19 this is correct. One second. 20 [Audio played from 229:10 to 230:9] 21 MR. EWALD: Thank you, Leila. 22 BY MR. EWALD: 23 Q. Okay. So I want to be real 24 clear, because this is important on the scope of 25 your opinions.
Page 231 1 much -- it's very much part of my opinion. 2 BY MR. EWALD: 3 Q. Right. You just said a moment 4 ago that you weren't really focused on present 5 day or when litigation was; you were focusing on 6 earlier stuff over the past 100 years. 7 A. I -- 8 Q. (Inaudible) -- 9 MS. PARFITT: Objection. 10 BY MR. EWALD: 11 Q. -- you answer? 12 MS. PARFITT: Objection. 13 THE WITNESS: Mr. Ewald, I believe 14 that misstates what I was saying. I was 15 responding specifically to, you said, how do you 16 know how litigation and all of this litigation 17 is impacting people? And I admitted that, you 18 know, I don't know exactly how litigation is 19 changing people's mindset in the present. 20 But I can, as an expert in this area, 21 say that there is a long legacy of beliefs about 22 the trustworthiness of Johnson & Johnson that 23 has an effect on people's psychology, that had 24 an effect of people's psychology, and I have 25 every reason to believe continues to have an	Page 231 Page 233 1 Do your opinions that you're offering 2 in this case go to the present day? 3 A. In what sense? 4 Q. Are you offering opinions about 5 the impact that Johnson & Johnson's statements 6 have had on consumers up to the present day? 7 A. You know, I realize I'm also 8 getting a little bit tired, and I should 9 probably take a break because I'm stammering. 10 But I definitely want to answer your question. 11 Q. Please do and then you can take a 12 break. 13 A. What's that? 14 Q. Please do, and then you can take 15 a break. 16 A. Sure. Of course. With respect 17 to talc products, so I wasn't asked to review 18 perceptions of Johnson & Johnson, the brand, or 19 litigation about Johnson & Johnson, or what's 20 happening in, you know, public opinion about 21 Johnson & Johnson or the litigation. I was 22 asked to review materials related to the 23 marketing of talc products. 24 Talc products were discontinued in 25 2020 in Canada and the US; and then 2022

<p style="text-align: right;">Page 234</p> <p>1 globally. And so the timeline that I'm talking 2 about in terms of how does their advertising and 3 how do their marketing messages impact people is 4 really relevant up to that point. I do think 5 that even today, the way that the information is 6 communicated to consumers is still biased in the 7 same way that it was historically, and that 8 there's nothing about J&J's strategy of 9 communication that seems to have changed that 10 whereas there might have been conflicting 11 evidence, or a lot of evidence, or evidence of 12 risk that they were acknowledging and taking 13 seriously for a very long time.</p> <p>14 They communicated to consumers in 15 absolutes, and today continue to communicate to 16 consumers in absolutes about the safety of their 17 products. So that's the sense in which I mean 18 that things continue into present day is 19 referring to their communication about the 20 safety of their products. And I'm not able to 21 speak to what the average consumer believes 22 about Johnson & Johnson, the brand, you know, as 23 we sit here in 2024.</p> <p>24 Q. Okay. Take a break. 25 MS. PARFITT: Thank you.</p>	<p style="text-align: right;">Page 236</p> <p>1 A. So there's nothing about 2 targeting per se that is wrong. What I take 3 issue with, in this case, is that Johnson & 4 Johnson had this credible evidence or credible 5 concerns about the safety of the product, and in 6 order to compensate for a loss of sales with one 7 market, they just tried to shift to a different 8 market. And there are a number of places where 9 in those marketing meetings, they're talking 10 about health concerns being a reason for the 11 powder decline.</p> <p>12 So that's the main issue that I take, 13 or the main issue that I have with the use of 14 targeting here; it was targeting in light of the 15 fact that people are buying less of the product 16 and the company knows that health concerns are a 17 reason why.</p> <p>18 Q. So if -- so, you're saying that 19 the -- well, wouldn't what you just said suggest 20 that the outsized impact, that the trust between 21 Johnson & Johnson and consumer that you speak 22 about in your report had already been broken 23 because of safety concerns?</p> <p>24 MS. PARFITT: Objection. 25 THE WITNESS: No, I wouldn't conclude</p>
<p style="text-align: right;">Page 235</p> <p>1 -- RECESS TAKEN AT 4:17 P.M. 2 -- RESUME AT 4:33 P.M. 3 BY MR. EWALD: 4 Q. Taking a little bit of a step 5 back. 6 Do you agree that an important aspect 7 of marketing is knowing who your consumers are 8 and what their needs are? 9 MS. PARFITT: Objection, form. 10 THE WITNESS: Yes, I would agree. 11 BY MR. EWALD: 12 Q. And you also agree that, as a 13 general matter, part of marketing is targeting 14 different markets -- markets and demographics 15 where you believe you have current consumers or 16 potential consumers, fair? 17 A. Fair, yes. 18 Q. And so if you look at page 20 of 19 your report and the whole paragraph that 20 precedes paragraph 77 going through 81, can you 21 walk me through on your opinions in those 22 paragraphs. 23 Is it your opinion that Johnson & 24 Johnson wrongfully targeted certain 25 demographics?</p>	<p style="text-align: right;">Page 237</p> <p>1 that. I would say that you had a trend over 2 time where you had a large population of 3 consumers that are buying less of the product, 4 and they're saying that health concerns are a 5 reason. You know, we can look to -- I'd have to 6 see when the last consumer research study that I 7 had access to is. But, you know, certainly, as 8 late as the 1990s, there's market research that 9 shows that there's still considerable trust in 10 the brand. I would say that in my reading, it 11 was shifting, but there's nothing that I 12 encountered which would suggest to me that that 13 trust was, as you said, broken.</p> <p>14 BY MR. EWALD: 15 Q. On another topic, one of the -- 16 hold on.</p> <p>17 -- OFF THE RECORD AT 3:48 P.M. 18 -- RESUME AT 3:49 P.M. 19 BY MR. EWALD: 20 Q. On Exhibit 17, I'm marking a copy 21 of O'Brien 2020. And this is one of the 22 epidemiological articles that you have on your 23 reference list, correct? 24 EXHIBIT NO. 17: Dr. O'Brien's article 25 published in JAMA, "Association of</p>

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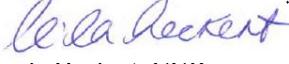
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1 Powder Use in the Genital Area With 2 Risk of Ovarian Cancer." 3 THE WITNESS: I believe so, yes. 4 MS. PARFITT: And, John, give me a 5 moment. 6 MR. EWALD: Sure. 7 MS. PARFITT: I'll get him a copy. 8 I'm going to look for one here, but right now, 9 I'm handing him mine for just speed, if that's 10 okay. I am going to tell you mine is 11 highlighted, but I don't think it will mean 12 anything to him. But I just want to be 13 transparent. 14 MR. EWALD: I definitely appreciate 15 that. Thank you. And you know, I don't think 16 to ask you certainly logical questions or much 17 about this, but I do have a couple of questions. 18 And if we go to -- all the way through to the 19 discussion section, which at least on the PDF is 20 on page 8 of 11, it's page 56 of the journal. 21 And then actually go a little bit further on the 22 following page. Do you see the paragraph that 23 starts "One of the main concerns...?" 24 A. Yes. 25 Q. And it states:	Page 240 1 And that is -- well, first of all, have you 2 encountered this concept of recall bias and the 3 debate over it in connection with the talc case 4 control studies? 5 MS. PARFITT: Objection. 6 THE WITNESS: I've read it before, 7 yes. 8 BY MR. EWALD: 9 Q. And it says here in the 10 Schildkraut studies where they are stratifying 11 the results by year interview based on timing of 12 the first major talc lawsuits, describing the 13 major talc lawsuits happen in 2014 or later. Is 14 that consistent with your understanding? 15 MS. PARFITT: Objection. 16 THE WITNESS: My understanding is: 17 That's the words that you're reading or...? 18 BY MR. EWALD: 19 Q. No. Is that consistent with do 20 you have an understanding of when the first 21 major talc lawsuits were filed? 22 A. I don't know. 23 Q. And if we scroll down, it's 24 referencing footnote 30, and you see where it 25 has article by Hsu, "Risk on all sides as 4800
Page 239 1 "One of the main concerns about 2 previous case-control studies on this 3 topic is the possibility for recall 4 bias, which will result in if case 5 participants were more likely to 6 report using powder than control 7 participants. As highlighted by 8 Trabert, the African American Cancer 9 Epidemiology Study found evidence 10 supporting this phenomenon. Based on 11 the timing of the first major talc 12 lawsuits, Schildkraut et al stratified 13 their results by year of interview 14 (earlier than 2014 versus 2014 or 15 later), observing that among women 16 interviewed earlier, ever use of 17 powder in the genital area was 18 less-strongly associated with ovarian 19 cancer (odds ratio [OR], 1.19 [95 20 percent confidence interval, 0.87 to 21 1.63]), than among women interviewed 22 later (OR, 2.91 [95 percent CI 1.70 to 23 4.97])." 24 I read all that, but there's only one 25 part where I wanted to just get your take on.	Page 241 1 women sue over Johnson's Baby Powder in cancer", 2 dated September 28, 2017. Do you see that? 3 A. I'm sorry, which reference was 4 it? Oh, 30, okay. Yes, I see that. 5 Q. Give me one second. Okay, 6 Dr. Newman, that is all the questions I have for 7 you. 8 A. Okay. 9 MS. PARFITT: John, could you give us 10 just a few minutes and we'll see if there's any 11 further redirect on our end, okay? 12 MR. EWALD: Sure. 13 MS. PARFITT: All right. Thank you. 14 Just a few minutes. 15 -- RECESS TAKEN AT 4:45 P.M. 16 -- RESUME AT 4:50 P.M. 17 MS. PARFITT: We have now concluded 18 the deposition. Thank you, all. 19 (Whereupon this examination concludes 20 at 4:51 P.M.) 21 22 23 24 25

1 CERTIFICATE OF REPORTER 2 CANADA 3 PROVINCE OF ONTARIO 4 I, Leila Heckert, CVR, the officer 5 before whom the foregoing deposition was taken, 6 do hereby certify that the witness whose 7 testimony appears in the foregoing deposition 8 was duly sworn by me; that the testimony of said 9 witness was taken by me in shorthand using 10 Computer Aided Realtime, to the best of my 11 ability, and thereafter reduced to written 12 format under my direction; that I am neither 13 counsel for, related to, nor employed by any of 14 the parties to the action in which the 15 deposition was taken, and further that I am not 16 related or any employee of any attorney or 17 counsel employed by the parties thereto, nor 18 financially or otherwise interested in the 19 outcome of the action. 20 21 22  23 Leila Heckert, CVR 24 25	Page 242 Page 244 1 *** ERRATA SHEET *** 2 3 NAME OF CASE: In re. JOHNSON & JOHNSON TALCUM 4 POWDER PRODUCTS MARKETING, 5 SALES PRACTICIES, AND PRODUCTS. 6 LIABILITY LITIGATION 7 DATE OF DEPOSITION: May 15th, 2024 8 NAME OF WITNESS: GEORGE NEWMAN, M.D. 9 10 PAGE LINE FROM TO 11 _____ 12 _____ 13 _____ 14 _____ 15 _____ 16 _____ 17 _____ 18 _____ 19 _____ 20 _____ 21 _____ 22 _____ 23 _____ 24 _____ 25 GEORGE NEWMAN, M.D.
1 INSTRUCTIONS TO WITNESS 2 3 Read your deposition over carefully. It is your 4 right to read your deposition and make changes 5 in form or substance. You should assign a 6 reason in the appropriate column on the erratum 7 sheet for any change made. 8 After making any changes in form or substance, 9 and which have been noted on the following 10 erratum sheet, along with the reason for any 11 change, sign your name on the erratum sheet and 12 date it. 13 Then sign your deposition at the end of 14 your testimony in the space provided. You are 15 signing it subject to the changes you have made 16 in the erratum sheet, which will be attached to 17 the deposition before filing. You must sign it 18 in front of a witness. The witness need not be 19 a notary public. Any competent adult may 20 witness your signature. 21 Return the original erratum sheet promptly. 22 Court rules require filing within 30 days after 23 you receive the deposition. 24 25	Page 243 Page 245 1 PROVINCE OF ONTARIO 2 TORONTO REGION 3 4 I, the undersigned, declare under 5 penalty of perjury that I have read the 6 foregoing transcript, and I have made any 7 corrections, additions or deletions that I was 8 desirous of making; 9 That the foregoing is a true and 10 correct transcript of my testimony contained 11 therein. 12 13 14 GEORGE NEWMAN, M.D. 15 16 Subscribed and sworn to before me this _____ day 17 of _____, 2024, at 18 _____, _____. 19 (City) (Province) 20 21 _____ 22 (Notary Public) 23 My Commission Expires: _____ 24 25

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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